

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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JUN 11 2018

Honorable Roger E. Henderson, Circuit Court Judge S.C. SUPREME COURT

RONDELL LEON CARTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002134

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUNE 27-29, 2011.....	1
FINAL BRIEF OF APPELLANT	350
APPLICATION FOR POST-CONVICTION RELIEF (2013-CP-22-0721)	361
RETURN (2013-CP-22-0721).....	368
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 5, 2015.....	373
ORDER OF DISMISSAL (2013-CP-22-0721)	399
APPLICATION FOR POST-CONVICTION RELIEF (2016-CP-22-00014)	410
RETURN AND PARTIAL MOTION TO DISMISS (2016-CP-22-00014)	418
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 23, 2017.....	426
ORDER GRANTING RELIEF PURSUANT TO <u>AUSTIN V. STATE</u> GRANTING PARTIAL MOTION TO DISMISS	438
INDICTMENTS	447

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	2009-GS-22-555, 556, 557, 559,
COUNTY OF GEORGETOWN	)	560, 561 and
	)	2011-GS-22-645
The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	Trial Transcript
	)	
Rondell Leon Carter,	)	June 27-29, 2011
	)	
Defendant.	)	

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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1	I N D E X	
2	June 27, 2011	
3	Motions.	6
4	Voir Dire.	12
5	Jury Selection	29
6	Opening Instructions by Court.	42
7	June 28, 2011	
8	Motions.	56
9	Opening Statement by Ms. Bailey.	63
10	Opening Statement by Mr. Felts.	70
11	<u>Rosa Milton</u>	
12	Direct by Ms. Bailey.	74
13	Cross by Mr. Felts.	82
14	<u>Michael Thacker</u>	
15	Direct by Ms. Bailey.	89
16	Juror 36 excused.	114
17	Cross by Mr. Felts.	138
18	Redirect by Ms. Bailey.	142
19	Recross by Mr. Felts.	143
20	<u>Dustin Morris</u>	
21	Direct by Ms. Bailey.	145
22	Cross by Mr. Felts.	146
23	<u>Lynn Picard</u>	
24	Direct by Ms. Bailey.	150
25	Cross by Mr. Felts.	152

1	<u>Phillip Hanna</u>	
2	Direct by Ms. Bailey.	153
3	<u>Jamie Powell</u>	
4	Direct by Ms. Bailey.	161
5	Cross by Mr. Felts.	173
6	Redirect by Ms. Bailey.	179
7	<u>Christina Carroll</u>	
8	Direct by Ms. Bailey.	181
9	Cross by Mr. Felts.	200
10	Redirect by Ms. Bailey.	206
11	<u>William Douglas</u>	
12	Direct by Ms. Bailey.	209
13	Cross by Mr. Felts.	222
14	Redirect by Ms. Bailey.	230
15	<u>Herman McCray</u>	
16	Direct by Ms. Bailey.	231
17	Cross by Mr. Felts.	245
18	June 29, 2011	
19	<u>Christopher Geno</u>	
20	Direct by Ms. Bailey.	254
21	Cross by Mr. Felts.	259
22	Robert Owens	
23	Direct by Ms. Bailey.	261
24	<u>Jared Bardon</u>	
25	Direct by Ms. Bailey.	264

1	Cross by Mr. Felts.	275
2	Motions.	278
3	Questioning Defendant Re: Testifying	280
4	Charges Discussed	290
5	Closing Argument by Ms. Bailey.	296
6	Closing Argument by Mr. Felts	305
7	Charge.	312
8	Verdict	333
9	Polling of Jury	335
10	Motions.	338
11	Sentencing.	342
12	Certificate	348

E X H I B I T S

(ALL EXHIBITS RETAINED BY GEORGETOWN COUNTY CLERK OF COURT.)

		Id	Evd
16	S-1 Photograph		92
17	S-2 Photograph		92
18	S-3 Bandana		122
19	S-4 Gun		120
20	S-5 Photograph		187
21	S-6 Photograph		192
22	S-7 Photograph		160
23	S-8 Bandana		155
24	S-9 T-Shirt		155
25	S-10 Photograph		92

State v. Young (3-17-11)

4

1	S-11 Photograph	92
2	S-12 Photograph	92
3	S-13 Photograph	92
4	S-14 Photograph	92
5	S-15 Photograph	92
6	S-16 Photograph	92
7	S-17 Photograph	92
8	S-18 Photograph	92
9	S-19 Photograph	92
10	S-20 Photograph	92
11	S-21 Photograph	92
12	S-22 Photograph	123
13	S-23 Photograph	120
14	S-24 Photograph	120
15	S-25 Photograph	120
16	S-26 Photograph	120
17	S-27 Photograph	123
18	S-28 Photograph	123
19	S-29 Photograph	123
20	S-30 Photograph	123
21	S-31 Photograph	123
22	S-32 Casing	153
23	S-33 Casing	153
24	S-34 Casing	153
25	S-35 Casing	153

State v. Young (3-17-11)

5

1	S-36 Casing	153
2	S-37 Poster (ID only)	
3	S-38 911 Tape	263
4	S-39 Certified Sentencing Sheets	340
5	S-40 Notice Seek Life	342
6	C-1 Foreperson Selection	
7	C-2 Charge	
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
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Motions

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1 (On the record, June 27, 2011.)

2 THE COURT: All right, this is State of South Carolina
3 versus Rondell Leon Carter. According to my notes this is
4 indictment numbers 2011-GS-22-645, 2011-GS-22-701, 2009-GS-22-
5 559, 2009-GS-22-560, 2009-GS-22-561, 2009-GS-22-555, 2009-GS-
6 22-556, and 2009-GS-22-557. Is that correct?

7 MS. BAILEY: Yes, Your Honor.

8 THE COURT: All right, I understand there's some
9 pretrial motions. Present at the call of the case, Erin
10 Bailey representing the State, and Jase Felts representing the
11 Defendant; is that correct?

12 MR. FELTS: Yes, sir, Your Honor.

13 THE COURT: All right, these are your motions, Mr.
14 Felts, or your motion, Mr. Felts?

15 MR. FELTS: Yes, sir, Your Honor.

16 THE COURT: All right, let me hear from you.

17 MR. FELTS: Your Honor, you - the Court's just read
18 off all of the indictments that are pending against my client.
19 Recently, last week I believe it was, beginning of last week I
20 was - I received two new indictments that were presented to
21 the Grand Jury on I believe, let's see here, give me just a
22 second, Judge. They were true-billed on June 15th, indictment
23 number 2011-GS-22-645 and 2011-GS-22-701, both of them are for
24 assault and battery with intent to kill. Judge, these
25 indictments, to my knowledge, have never been served on my

1 client, and I have gotten a copy of them, got them here in my
2 hand, but you know, the constitution provides that in a
3 criminal case the Defendant, you know, has a right to be fully
4 informed against or least of the nature of the action that the
5 State is seeking against them. Now, these are the same
6 charges, charge, excuse me, that was already indicted or that
7 my client was already indicted on back originally when the
8 bulk of the, of the rest of the indictments were presented and
9 that was back in May, looks like May of 2009, May 13th I
10 believe is when it, when it was true-billed for the same
11 charge; and so, Judge, I would - this is essentially a motion
12 to quash the two new indictments simply because they've never
13 been served on him and, Your Honor, it's our position that the
14 State should be forced to go forward on the original assault
15 and battery with intent to kill indictment. That's 2009-GS-
16 22-558, and Your Honor, the wording really is virtually
17 identical to one of the new ABWIK indictments wherein it
18 alleges that my client shot the victim, Christina Carroll,
19 that's virtually identical to the one from May of 2009 and
20 then the second one says that or alleges that my client hit
21 the - the victim, Christina Carroll, on the head with a gun;
22 and so, Judge, I would ask that they be quashed, number one,
23 because he hasn't been served with them, and then number two,
24 that there was already an ABWIK indictment and he was served
25 an arrest warrant with back when this incident occurred.

Motions

8

1 THE COURT: And what happened to that indictment?

2 MR. FELTS: It's still pending as far as I'm aware.

3 MS. BAILEY: It is, yes, Your Honor.

4 THE COURT: All right, so, Ms. Bailey, what's ---

5 MS. BAILEY: Your Honor, there's two issues here. I'm
6 going to try to separate them. One is the notice issue and
7 for that matter that the way that the State serves any
8 indictment on the Defendant is by his attorney, and as soon as
9 those indictments came in we served them on Mr. Felts for the
10 purpose ---

11 THE COURT: Well, what is the reason for not indicting
12 him until when you've got these indictments pending since May
13 of 2009?

14 MS. BAILEY: Your Honor, it ---

15 THE COURT: Why do you wait until June 15th of 2011 on
16 these?

17 MS. BAILEY: In anticipation of trial the State was
18 just trying to clean up some language. The indictment is a
19 notice document.

20 THE COURT: Right.

21 MS. BAILEY: And he certainly had notice of these
22 allegations against him. The language is just a little bit
23 different in these new indictments, and in addition he's
24 gotten his discovery two years ago and these indictments it's
25 the same allegations that were in the discovery from two years

1 ago. He certainly had notice to prepare for these allegations
2 against him. The wording ---

3 THE COURT: Well, I guess that's - what's the
4 difference in the language?

5 MS. BAILEY: Well, the first indictment said a black
6 380 Hi-Point gun and the second one just says a gun.

7 THE COURT: Okay.

8 MS. BAILEY: And then the - in addition it separates
9 out the two different ABWIKS. One was the hitting her in the
10 head with the gun and the other one was getting shot with the
11 gun. That's the only difference, and all those allegations
12 were contained in the original incident report and all the
13 witness statements. He's had notice and plenty of time to
14 prepare for these allegations.

15 THE COURT: All right, so, when he hit her in the
16 head and shot her this was all in a - one occurrence, one
17 incident?

18 MS. BAILEY: It was in a period of 24 hours. It was
19 all during the same burglary and kidnapping incident, but he
20 hit her in the head maybe five minutes apart from the time
21 when he shot her, allegedly.

22 THE COURT: Okay, and the original ABWIK indictment
23 from 2009 what was he charged - what did it say?

24 MS. BAILEY: Your Honor, the ---

25 THE COURT: I mean, were there one or two ABWIK

Motions

10

1 indictments from 2009?

2 MS. BAILEY: There was one from 2009 and - you have a
3 copy of it, okay? Your Honor, it may be easier to just hand
4 this up to the ---

5 THE COURT: Here, I've got it. He's given it to me
6 now. Here it is.

7 MS. BAILEY: Okay.

8 THE COURT: So, that one, the ABWIK, 2009, was just
9 for the shooting, not for the hitting; correct?

10 MS. BAILEY: Yes, Your Honor.

11 THE COURT: Okay.

12 So, with regard to indictment 2009-GS-22-558, the 2009
13 indictment, what are you all going to do with that one?

14 MS. BAILEY: Your Honor, the State is not calling it
15 for trial at this time.

16 THE COURT: Well, I mean, if you - if this is the same
17 incident you can't call it.

18 MS. BAILEY: Right, that would be double jeopardy if
19 he's convicted of these. It would, it would be double
20 jeopardy.

21 THE COURT: Okay, all right, all right, Mr. Felts, I'm
22 going to grant your motion as to indictment 2011-GS-22-701 the
23 hitting in the head. I think there is a notice problem where
24 you got June of 2000 - in other words, he's been acting under
25 an indictment where he shot somebody to support the ABWIK

1 charge for the last two years and now basically two weeks
2 before trial you're saying hitting in the head is also an
3 ABWIK. So, I'm going to grant your motion as to 2011-GS-22-
4 701, which is the indictment for assault and battery with
5 intent to kill, the allegations being that he hit Christina
6 Carroll in the head with a gun. I'm denying your motion as to
7 2011-GS-22-645, assault and battery with intent to kill, the
8 allegation being that he shot Christina Carroll because I find
9 that that's substantially the same as the indictment 2009-GS-
10 22-558.

11 MR. FELTS: Thank you, Your Honor.

12 THE COURT: All right.

13 MS. BAILEY: Your Honor, taking that one step further
14 the State would - just wants to clarify that the hitting her,
15 the hitting of Christina Carroll in the head was part of the
16 res gestae of the other crimes, of the kidnapping, of the
17 armed robbery and that the State be allowed to discuss that
18 incident as part of the larger res gestae of the entire crime
19 even though it's not indicted.

20 THE COURT: Yeah, you can bring it up and you can put
21 it into evidence and all of that, but I'm not going to allow
22 him to be convicted for assault and battery with intent to
23 kill for hitting her in the head. If you're going to get a
24 conviction for assault and battery with intent to kill it's
25 going to be based upon the shooting.

Motions

12

1 MS. BAILEY: Okay, thank you, Your Honor.

2 THE COURT: All right, but yeah, it's still evidence
3 that can come in as part of the res gestae on all of the
4 charges against him.

5 MS. BAILEY: Thank you, Your Honor.

6 THE COURT: Because it's a fact or I don't know if
7 it's a fact of the case or not, but that's a fact that can
8 come in, yeah, all right.

9 MR. FELTS: Thank you, Judge. That's all I've got for
10 right now. Thank you.

11 THE COURT: All right.

12 Are we ready to go ahead into jury selections?

13 MS. BAILEY: The State is ready, Your Honor.

14 THE COURT: All right, is the Defense ready?

15 MR. FELTS: Yes, sir.

16 THE COURT: All right, let's take about a five minute
17 break while we get the jury panel in here.

18 OFF THE RECORD

19 (On the record.)

20 (Whereupon, the following takes place in the presence of
21 the jury panel.)

22 THE COURT: All right, ladies and gentlemen of the
23 jury panel, we are getting ready to start the trial of the
24 case of the State of South Carolina versus Rondell Leon
25 Carter. Now, Mr. Carter has been charged and indicted on the

Voir Dire

13

1 charges of assault and battery with intent to kill, possession
2 of a weapon during the commission of a violent crime,
3 kidnapping, burglary in the first degree, armed robbery, armed
4 robbery and kidnapping, and I've got some questions to go over
5 with you. All of you have been qualified to serve as jurors
6 for this week in General Sessions Court. However, I have some
7 questions now that are commonly referred to as voir dire
8 questions. These are to determine your qualifications to
9 serve as jurors on this particular case. It also gives the
10 attorneys some additional information that helps them in their
11 jury selection process. So, just like with the jury
12 qualification questions this morning if I could get the jury
13 panel to please stand and raise your right hand, please.

14 (Jury panel sworn by Court.)

15 THE COURT: All right, please be seated.

16 Is there any member of the jury panel who did not respond
17 to the oath by saying I do? If so, please stand.

18 (No response.)

19 THE COURT: All right, ladies and gentlemen, as I
20 said, this is the case of the State of South Carolina versus
21 Rondell Leon Carter, who is the Defendant. The alleged
22 victims in these cases are Christina Carroll and William
23 Douglas. Is there any member of the jury panel related by
24 blood or marriage, have a close personal relationship,
25 business relationship, social relationship or any type of

Voir Dire

14

1 relationship with either the Defendant, Rondell Leon Carter,
2 William Douglas or Christina Carroll? If so, please stand.

3 (No response.)

4 THE COURT: All right, the potential witnesses in this
5 case and there's a number of them, so please listen carefully
6 as I go over this list with you. The potential witnesses in
7 this case are Herman McCray, Jr.; Matthew Cobb, Jr.; Robert
8 Richardson, Jr.; Christina Carroll; William Douglas; Thermond
9 Seward, Sr.; Rosa Lee Milton; Jamie Powell; Lisa Price;
10 Timberly Avant; Chip Daniels; Chris Geno, G-E-N-O; Jared
11 Bardon; Phil Hanna; Dustin Morris; Mike Thacker; Mike Nelson;
12 Lynn Picard; Chris Howard; Chris Crabtree; Frank Preston;
13 Chris Howard; Robbie Owens; Gary Todd; William Baxley and Bert
14 Powell. I know that was kind of a long list, but is there any
15 member of the jury panel related by blood or marriage, have a
16 close personal relationship, business relationship, social
17 relationship or any other type of relationship with any of
18 these potential witnesses?

19 All right, please stand for just a second.

20 All right, starting over here to the left, ma'am, if you
21 would please give me your name.

22 MS. BASS: Courtney Bass.

23 THE COURT: And your jury number?

24 MS. BASS: Six.

25 THE COURT: Courtney R. Bass?

1 MS. BASS: Uh-huh.

2 THE COURT: All right, now, Ms. Bass, which potential
3 witness or witnesses did you know?

4 MS. BASS: Timberly Avant and both Chris Howards.

5 THE COURT: Timberly Avant and both Chris Howards, are
6 you related to any of them?

7 MS. BASS: No, sir.

8 THE COURT: All right, how do you know them?

9 MS. BASS: I went to school with both, all of them.

10 THE COURT: Okay.

11 MS. BASS: Me and Timberly used to work together.

12 THE COURT: All right, so, you all - how long ago did
13 you all work together?

14 MS. BASS: It's been a month since, we worked
15 together for about six months.

16 THE COURT: Okay, and how long ago were you in school
17 with them?

18 MS. BASS: We graduated in '09 together.

19 THE COURT: All right, how often do you see them now?

20 MS. BASS: Not too often.

21 THE COURT: Okay, would your relationship with them be
22 such that it would affect your ability to give both the State
23 and the Defendant a fair and impartial trial in this case?

24 MS. BASS: I don't think so.

25 THE COURT: Okay, and I understand your honesty in

Voir Dire

16

1 saying that you don't think so, but the primary focus is we
2 have to be sure that all parties receive a fair and impartial
3 trial without any influence from any outside source; and so,
4 the critical question is would your relationship with them do
5 you feel that it would affect or would you be influenced one
6 way or the other by this prior ---

7 MS. BASS: I don't think so.

8 THE COURT: Okay, are you sure?

9 MS. BASS: I don't think so. I don't think so, I
10 mean.

11 THE COURT: I know. Well, let me ask you this, could
12 you totally disregard your association with those potential
13 witnesses and base your decision if you're selected as a juror
14 exclusively on the testimony and evidence?

15 MS. BASS: Yes, sir, I could.

16 THE COURT: Okay, all right, Ms. Bass, thank you for
17 bringing that to our attention. I'm going to allow you to
18 stay with us.

19 All right, the lady to my left, her right, your name and
20 number?

21 MS. BRITT: Mary Britt, I'm 25.

22 THE COURT: What's your jury number?

23 MS. BRITT: 25.

24 THE COURT: Okay, and I saw it a while ago.

25 All right, Ms. Britt, who is it that you know on this

1 witness list?

2 MS. BRITT: I know Chris Howard.

3 THE COURT: Who?

4 MS. BRITT: Chris Howard.

5 THE COURT: Chris Howard, and how do you know Chris
6 Howard?

7 MS. BRITT: We went to school together and we were
8 friends.

9 THE COURT: All right, now, when you say you are
10 friends how often do you see him?

11 MS. BRITT: I just saw him the other day like
12 yesterday.

13 THE COURT: Like yesterday. You all stay in contact
14 pretty regularly?

15 MS. BRITT: Yeah, I'm actually going to see him today.

16 THE COURT: Okay, all right, Ms. Britt, I'm going to
17 go ahead and excuse you from this particular trial. Thank you
18 very much. If you'd stay with us though.

19 MS. BAILEY: Your Honor ---

20 THE COURT: Ms. Britt, just stay with us for right
21 now, okay.

22 MS. BAILEY: Your Honor, could I clarify that this
23 Chris Howard on the witness list is in law enforcement and has
24 been for several years?

25 THE COURT: Well, there are two Chris Howards on here.

Voir Dire

18

1 MS. BAILEY: They both are. They both are.

2 THE COURT: Okay.

3 MS. BAILEY: The Chris Howards on the list are in law
4 enforcement.

5 THE COURT: Okay.

6 MS. BAILEY: I don't know if that's the same one, but
7 ---

8 THE COURT: Are those the same ones that you know, Ms.
9 Britt? Ms. Britt, if you'd please stand, and all we can go
10 on is that the two Chris Howards that are in law enforcement
11 do you know whether or not those are the same ones?

12 MR. BRITT: I don't - I actually don't think that's
13 the ones that I know.

14 THE COURT: Okay, huh?

15 MS. BRITT: I think it's a different Chris Howard.

16 THE COURT: Well, there are two Chris Howards.

17 MS. BRITT: Yeah, but mine graduated in '07 with me.

18 THE COURT: In 2007 with you? Do you know when this
19 Chris Howard graduated?

20 MS. BAILEY: I believe it would have been some time
21 much earlier than that, Your Honor.

22 THE COURT: Okay, all right, out of a precautionary,
23 Ms. Britt, I'm going to go ahead and excuse you from this case
24 but please stay with us. Thank you very much.

25 MS. BRITT: You're welcome.

1 THE COURT: All right, yes, sir, your name and number?
2 MR. MILLER: Leo Miller, 187.
3 THE COURT: All right, Mr. Miller, who is it that you
4 know?
5 MR. MILLER: William Baxley is my cousin.
6 THE COURT: He's your cousin?
7 MR. MILLER: Yes, sir.
8 THE COURT: First cousin, second cousin, how close?
9 MR. MILLER: Second.
10 THE COURT: Second, all right.
11 All right, Mr. Miller, I'm going to excuse you from this
12 particular case, okay. Thank you very much.
13 All right, the lady up in the front, your name and
14 number?
15 MS. DEKINE-MCCRAY: Mary Dekine-McCray, Number 63.
16 THE COURT: Your last name is what?
17 MS. DEKINE-MCCRAY: Dekine-McCray.
18 THE COURT: Okay, all right, Ms. Dekine-McCray, who is
19 it that you know?
20 MS. DEKINE-MCCRAY: I'm related to Rosa Lee Milton.
21 THE COURT: How are you related to her?
22 MS. DEKINE-MCCRAY: Maybe a third cousin.
23 THE COURT: Okay, now, how often do you see her?
24 MS. DEKINE-MCCRAY: I've not seen her in a while.
25 THE COURT: You haven't seen her.

Voir Dire

20

1 MS. DEKINE-MCCRAY: Maybe a year ago.

2 THE COURT: Okay, would your relationship to her
3 affect your ability to be fair and impartial to both the State
4 and the Defense in this case?

5 MS. DEKINE-MCCRAY: No.

6 THE COURT: Would you give her testimony any
7 preferential treatment simply because she's your cousin?

8 MS. DEKINE-MCCRAY: No.

9 THE COURT: Would you be able to disregard your
10 relationship to her in its entirety and if you were selected
11 as a juror base your testimony, base your decision exclusively
12 on the testimony and evidence in this case?

13 MS. DEKINE-MCCRAY: Yes.

14 THE COURT: Okay, let me hear from the State's
15 position regarding Ms. Dekine-McCray.

16 MS. BAILEY: The State has no objection to dismissing
17 Ms. McCray if that's what the Defendant.

18 THE COURT: All right, Mr. Felts, what's your
19 position?

20 MR. FELTS: As far as dismissing her?

21 THE COURT: Yeah.

22 MR. FELTS: Or excusing her from this? I - that's
23 fine with us.

24 THE COURT: As far as what?

25 MR. FELTS: As far as excusing her as a juror?

1 THE COURT: Yeah, I mean, do you want to challenge her
2 for cause? There is a relationship but are you satisfied with
3 her responses?

4 MR. FELTS: Can we approach?

5 THE COURT: Yeah, come on up.

6 (Whereupon, a bench conference is held in the presence
7 but out of the hearing of the jury panel.)

8 THE COURT: All right, Ms. Dekine-McCray, I'm going to
9 go ahead and excuse you from this particular case; okay?
10 Thank you very much.

11 All right, the gentleman right behind her, your name and
12 number, sir?

13 MR. INMAN: 132, Julius Inman.

14 THE COURT: All right, Mr. Inman, who is it that you
15 know?

16 MR. INMAN: Mike Thacker and Gary Todd.

17 THE COURT: All right, and how do you know them?

18 MR. INMAN: I worked with them at the Sheriff's Office
19 for about ten years. I was a deputy.

20 THE COURT: Okay, would that affect your ability to be
21 - well, first let me ask you this, how often do you see them
22 now?

23 MR. INMAN: Occasionally.

24 THE COURT: Okay.

25 MR. INMAN: I just run into them somewhere.

Voir Dire

22

1 THE COURT: Would the manner in which you know them
2 affect your ability to give the State and the Defendant a fair
3 and impartial trial?

4 MR. INMAN: No, sir.

5 THE COURT: Okay.

6 MR. INMAN: It wouldn't affect me.

7 THE COURT: Well, what I guess my question is would
8 you be more inclined to believe their testimony regardless of
9 what the other evidence showed in this case?

10 MR. INMAN: Well, 13 years in law enforcement I've
11 probably become a little prejudice.

12 THE COURT: I understand and I appreciate you letting
13 us know that, Mr. Inman. I'm going to excuse you from this
14 particular case.

15 All right, the lady to his left and my right, your name
16 and number?

17 MS. HONYOTSKI: Maggie Honyotski, Juror 129. I went
18 to high school with Timberly Avant.

19 THE COURT: All right, and how long ago was this?

20 MS. HONYOTSKI: She was in my grade and she graduated
21 as a junior with me. So, about two years ago.

22 THE COURT: About two years ago?

23 MS. HONYOTSKI: Three, probably.

24 THE COURT: All right, now, were you all just in
25 school together or ---

1 MS. HONYOTSKI: We just had like classes together.

2 THE COURT: All right, do you socialize together or
3 anything of that nature?

4 MS. HONYOTSKI: Not really, just like if I see her
5 she says hi, I say hi.

6 THE COURT: Okay, would that relationship affect your
7 ability to be fair and impartial to both the State and the
8 Defendant in this case?

9 MS. HONYOTSKI: No, sir.

10 THE COURT: Would you be able to disregard that
11 relationship in its entirety and base your decision in this
12 case exclusively on the testimony and evidence?

13 MS. HONYOTSKI: Yes, sir.

14 THE COURT: All right, thank you, Ms. Honyotski, for
15 bringing that to our attention.

16 Yes, ma'am, your name and number?

17 MS. GOUDE: Rebecca Goude, 102.

18 THE COURT: All right, Ms. Goude, who is it that you
19 know?

20 MS. GOUDE: Gary Todd and Chris Howard.

21 THE COURT: All right, and how do you know them?

22 MS. GOUDE: Our children are friends and Gary's son
23 comes and spends the night at our house a lot.

24 THE COURT: Okay, and how old is he?

25 MS. GOUDE: 12.

Voir Dire

24

1 THE COURT: 12, okay. All right, Ms. Goude, I'm going
2 to go ahead and excuse you from this particular case, okay?

3 MS. GOUDE: Thank you.

4 THE COURT: Thank you.

5 Yes, sir, your name and number?

6 MR. RUFUS: Juror Number 232, Matthew Rufus.

7 THE COURT: All right, Mr. Rufus, who is it that you
8 know?

9 MR. RUFUS: I went to high school with a Michael
10 Thacker. I don't know if it's the one in this case. This
11 Michael Thacker would have graduated a year after me. I
12 graduated in 2008. So, I just heard it referred ---

13 THE COURT: Do you know?

14 MS. BAILEY: No, Your Honor.

15 THE COURT: That's all right. Do you know whether
16 this would be the same one or not?

17 MS. BAILEY: No, Your Honor. This Mike Thacker is at
18 least 30 years old.

19 MR. RUFUS: Then I don't know this Mike Thacker.

20 THE COURT: Okay, thank you very much for bringing
21 that to our attention.

22 Anyone else know any of these potential witnesses?

23 (No response.)

24 THE COURT: All right, the attorney for the State of
25 South Carolina in this case is Ms. Erin Bailey, and the

1 attorney for the Defendant in this case is Mr. Jase Felts of
2 the firm of Harmond and Felts.

3 Is there any member of the jury panel related by blood or
4 marriage, have a close personal relationship, business
5 relationship, social relationship or any other type of
6 relationship with either of these attorneys? If so, please
7 stand.

8 (No response.)

9 THE COURT: Is any member of the jury panel ever been
10 represented by either of these attorneys? If so, please
11 stand.

12 (No response.)

13 THE COURT: Has any member of the jury panel ever been
14 involved in any type of legal action in which one or both of
15 these attorneys represented another party to that action? If
16 so, please stand.

17 (No response.)

18 THE COURT: Has any member of the jury panel ever been
19 represented by an attorney with the 15th Circuit Solicitor's
20 Office? Please stand.

21 (No response.)

22 THE COURT: Has any member of the jury panel ever been
23 represented by an attorney with the law firm of Harmond and
24 Felts? If so, please stand.

25 (No response.)

Voir Dire

26

1 THE COURT: Is there any member of the jury panel who
2 either personally or has a family member employed
3 with the 15th Circuit Solicitor's Office or with the law firm
4 of Harmond and Felts? If so, please stand.

5 (No response.)

6 THE COURT: Has any member of the jury panel formed or
7 expressed an opinion about any issue or matter involved in
8 this case? If so, please stand.

9 (No response.)

10 THE COURT: Is any member of the jury panel aware of
11 any bias or prejudice towards either the State of South
12 Carolina or the Defendant in this case? If so, please stand.

13 (No response.)

14 THE COURT: Is there any member of the jury panel that
15 was a member of the grand jury which issued the indictments in
16 this case? If so, please stand.

17 (No response.)

18 THE COURT: Is there any member of the jury panel who
19 is a member of or a contributor to any group which has as its
20 primary concern the promotion of law enforcement or victims'
21 rights? Some of these organizations include but are not
22 limited to Mothers Against Drunk Drivers, which is commonly
23 referred to as MADD, Students Against Drunk Drivers, which is
24 commonly referred to as SADD, Citizens Against Violent Crime
25 or CAVC and Citizens Against Spousal Abuse or CASA, any member

1 - anybody a member of such organization or a contributor to
2 such organizations? If so, please stand.

3 (No response.)

4 THE COURT: Okay, these alleged incidents occurred at
5 ■■■ Mossdale Lane in Georgetown County on or about January
6 23rd, 2009. Is there any member of the jury panel - as I said,
7 the charges are assault and battery with intent to kill,
8 possession of a weapon during the commission of a violent
9 crime, two counts of kidnapping, burglary in the first degree
10 and two counts of armed robbery. Is there any member of the
11 jury panel who has heard anything, read anything, discussed
12 anything about this case or knows anything about this case?
13 If so, please stand.

14 (No response.)

15 THE COURT: Does any member of the jury panel know of
16 any reason whatsoever why he or she should not serve as a
17 juror in this case with particular emphasis being placed on
18 your ability to be fair and impartial to both the State and
19 the Defendant in this case? If so, please stand.

20 (No response.)

21 THE COURT: Any additional questions from the State?

22 MS. BAILEY: None, Your Honor.

23 THE COURT: Any from the Defense?

24 MR. FELTS: No, sir, Your Honor. We do have one
25 matter that we need to take up at the bench if that's okay.

Voir Dire

28

1 THE COURT: All right, come on up.

2 (Whereupon, a bench conference was held in the presence
3 but out of the hearing of the jury panel.)

4 THE COURT: All right, ladies and gentlemen, I
5 apologize for that interruption. Let me go over the final
6 question again because it is important in this case. Is there
7 any member of the jury panel aware of any reason whatsoever
8 why he or she should not serve as a juror in this case, with
9 particular emphasis being placed on your ability to be fair
10 and impartial to both the State and the Defendant. If you
11 don't think you can be fair and impartial to both the State
12 and the Defendant you need to let us know at this point in
13 time, anybody whatsoever.

14 (No response.)

15 THE COURT: All right, ladies and gentlemen, what
16 happens at this point in time is your names have been fed into
17 a computer and you have been given a random chronological
18 order by the computer and your name will be called out one at
19 a time. When your name is called if you would please come and
20 stand here in front of the attorneys, bring with you any
21 pocketbooks, any coats, newspapers, books, whatever you might
22 have with you if'd you bring them, those with you when you
23 come forward and what will happen is you will come forward
24 and you'll face the attorneys and Ms. Bailey will look at
25 you a little while and then she is going to look at

1 her notes a little while and then she's going to study it a
2 little bit more and then she's going to decide if she wants
3 you as a juror. Then when she's through if she wants you as a
4 juror then the Defense counsel is going to look at you a
5 little while and look at his notes a little while and look
6 back at you a little while and decide if he wants you as a
7 juror and we go through this process until we have selected 12
8 jurors. So, how many alternates do you think we need in this
9 case? We want to go with two alternates?

10 MS. BAILEY: Yes, Your Honor, two.

11 THE COURT: All right.

12 MR. FELTS: That's fine.

13 THE COURT: All right, so, we'll be selecting 12
14 jurors and two alternates. So, please listen up and when your
15 name is called if you would please come forward, stand in
16 front of the attorneys and face them. Thank you very much.
17 Now, we've got five and 10; is that right?

18 MS. BAILEY: Yes, Your Honor.

19 MR. FELTS: Yes, sir.

20 THE COURT: All right.

21 THE CLERK: Juror Number 66, Susan Duncan.

22 What says the State?

23 MS. BAILEY: Please present this juror.

24 THE CLERK: What says the Defense?

25 MR. FELTS: Please seat the juror.

Jury Selection

30

1 THE CLERK: Please take a seat in the jury box.
2 Juror Number 39, Elizabeth Chamblee.
3 What says the State?
4 MS. BAILEY: Please present Ms. Chamblee.
5 THE CLERK: What says the Defense?
6 MR. FELTS: Please excuse Ms. Chamblee from the trial
7 of this case. Thank you.
8 THE COURT: All right.
9 THE CLERK: You may return to your seat.
10 Juror Number 50, Nathaniel Cooper, Jr.
11 What says the State?
12 MS. BAILEY: Please present Mr. Cooper.
13 THE CLERK: What says the Defense?
14 MR. FELTS: Please seat the juror.
15 THE CLERK: Please take a seat in the jury box.
16 Juror Number 6, Courtney Bass.
17 What says the State?
18 MS. BAILEY: Please excuse Ms. Bass.
19 THE CLERK: You may return to your seat.
20 Juror Number 37, Jason Carraway.
21 What says the State?
22 MS. BAILEY: Please present Mr. Carraway.
23 THE CLERK: What says the Defense?
24 MR. FELTS: Please seat Mr. Carraway.
25 THE CLERK: Please take a seat in the jury box.

Jury Selection

31

1 Juror Number 229, Ana Rourke.
2 What says the State?
3 MS. BAILEY: Please present Ms. Rourke.
4 THE CLERK: What says the Defense?
5 MR. FELTS: Please excuse Ms. Rourke from the trial of
6 this case.
7 THE CLERK: You may return to your seat.
8 Juror Number 83, Stephanie Frey.
9 What says the State?
10 MS. BAILEY: Please present Ms. Frey.
11 THE CLERK: What says the Defense?
12 MR. FELTS: Please excuse Ms. Frey from the trial of
13 this case.
14 THE CLERK: You may return to your seat.
15 Juror Number 225, Renee Roberts.
16 What says the State?
17 MS. BAILEY: Please present Ms. Roberts.
18 THE CLERK: What says the Defense?
19 MR. FELTS: Please seat the juror.
20 THE CLERK: Please take a seat in the jury box.
21 Juror Number 249, Josiah Stafford.
22 What says the State?
23 MS. BAILEY: Please present Mr. Stafford.
24 THE CLERK: What says the Defense?
25 MR. FELTS: Please seat the juror.

Jury Selection

32

1 THE CLERK: Please take a seat in the jury box.
2 Juror Number 170, Jerry Martin.
3 What says the State?
4 MS. BAILEY: Please present the juror.
5 THE CLERK: What says the Defense?
6 MR. FELTS: Please excuse Ms. Martin from the trial of
7 this case.
8 THE CLERK: You may return to your seat.
9 Juror Number 164, Martin Livingston.
10 What says the State?
11 MS. BAILEY: Please excuse Mr. Livingston.
12 THE CLERK: You may return to your seat.
13 Juror Number 85, Kelly Fuller.
14 What says the State?
15 MS. BAILEY: Please excuse Ms. Fuller.
16 THE CLERK: You may return to your seat.
17 Juror Number 285, Belinda Wilson.
18 What says the State?
19 MS. BAILEY: Please present Ms. Wilson.
20 THE CLERK: What says the Defense?
21 MR. FELTS: Please excuse Ms. Wilson from the trial of
22 this case.
23 THE CLERK: You may return to your seat.
24 Juror Number 2, Steve Alston.
25 What says the State?

Jury Selection

33

1 MS. BAILEY: Please present Mr. Alston.
2 THE CLERK: What says the Defense?
3 MR. FELTS: Please present this juror.
4 THE CLERK: Please take a seat in the jury box.
5 Juror Number 250, Shirley Stafford.
6 What says the State?
7 MS. BAILEY: Please present Ms. Stafford.
8 THE CLERK: What says the Defense?
9 MR. FELTS: Please excuse Ms. Stafford from the trial
10 of this case.
11 THE CLERK: You may return to your seat.
12 Juror Number 238, Patty Seat.
13 What says the State?
14 MS. BAILEY: Please present Ms. Seat.
15 THE CLERK: What says the Defense?
16 MR. FELTS: Please seat the juror.
17 THE CLERK: Please take a seat in the jury box.
18 Juror Number 148, Erica Kopp.
19 What says the State?
20 MS. BAILEY: Please present Ms. Kopp.
21 THE CLERK: What says the Defense?
22 MR. FELTS: Please excuse Ms. Kopp from the trial of
23 this case.
24 THE CLERK: You may return to your seat.
25 Juror Number 292, Robert Winns.

Jury Selection

34

1 What says the State?

2 MS. BAILEY: Please present Mr. Winns.

3 THE CLERK: What says the Defense?

4 MR. FELTS: Please seat Mr. Winns.

5 THE CLERK: Please take a seat in the jury box.

6 Juror Number 241, Anna Simerson.

7 What says the State?

8 MS. BAILEY: Please present Ms. Simerson.

9 THE CLERK: What says the Defense?

10 MR. FELTS: Please excuse Ms. Simerson from the trial

11 of this case.

12 THE CLERK: You may return to your seat.

13 Juror Number 214, Kelly Price.

14 What says the State?

15 MS. BAILEY: Please present Ms. Price.

16 THE CLERK: What says the Defense?

17 MR. FELTS: Please excuse Ms. Price from the trial of

18 this case.

19 THE CLERK: You may return to your seat.

20 Juror Number 124, Ethel Holden.

21 What says the State?

22 MS. BAILEY: Please present Ms. Holden.

23 THE CLERK: What says the Defense?

24 MR. FELTS: Please seat the juror.

25 THE CLERK: Please take a seat in the jury box.

1 Juror Number 36, James Canteen.
2 What says the State?
3 MS. BAILEY: Please present Mr. Canteen.
4 THE CLERK: What says the Defense?
5 MR. FELTS: Please seat the juror.
6 THE CLERK: Please take a seat in the jury box.
7 Juror Number 75, Albert Foderaro.
8 THE COURT: Excuse me, sir, how do you pronounce your
9 name?
10 MR. FODERARO: Foderaro.
11 THE COURT: Foderaro, thank you very much.
12 MR. FODERARO: You're welcome.
13 THE CLERK: What says the State?
14 MS. BAILEY: Please present Mr. Foderaro.
15 THE CLERK: What says the Defense?
16 MR. FELTS: Please seat the juror.
17 THE CLERK: Please take a seat in the jury box.
18 THE COURT: All right, those are our 12 jurors. We'll
19 select two alternates. The first alternate the State will
20 have one strike. Well, wait a minute, no, that's not 12.
21 THE CLERK: 11.
22 THE COURT: Who have I got that you all don't have?
23 Let me see your list. I have Ms. Duncan, Ms. [sic] Cooper,
24 Mr. Carraway, Ms. Roberts, Mr. Stafford, Mr. Alston, Ms. Seat,
25 Winns, Simerson.

Jury Selection

36

1 THE CLERK: She was excused.
2 THE COURT: She was excused.
3 THE CLERK: By the Defense.
4 THE COURT: Okay, that's, that's where I messed up
5 then.
6 All right, my fault. Let's go ahead.
7 THE CLERK: Juror Number 255, Juanita Sumpter.
8 What says the State?
9 MS. BAILEY: Please excuse Ms. Sumpter.
10 THE CLERK: What says the Defense? Ms. Sumpter, Ms.
11 Sumpter.
12 THE COURT: No, she was excused by the State.
13 THE CLERK: Oh, I'm sorry. Okay, that's the State?
14 THE COURT: Yep.
15 THE CLERK: All right, Juror Number 140, Reginald
16 Johnson.
17 What says the State?
18 MS. BAILEY: Please present Mr. Johnson.
19 THE CLERK: What says the Defense?
20 MR. FELTS: Please seat the juror.
21 THE CLERK: Please take a seat in the jury box.
22 THE COURT: All right, now we have our 12th juror. All
23 right, we'll select two alternates. The State gets one
24 strike. The Defense gets two strikes. First alternate.
25 THE CLERK: Juror Number 254, Ella Sumpter.

Jury Selection

37

1 What says the State?

2 MS. BAILEY: Please excuse Ms. Sumpter.

3 THE CLERK: You may return to your seat.

4 Juror Number 81, David Foy, Jr.

5 What says the State?

6 MS. BAILEY: Please present Mr. Foy.

7 THE CLERK: What says the Defense?

8 MR. FELTS: Please excuse Mr. Foy from the trial of

9 this case.

10 THE CLERK: You may return to your seat.

11 Juror Number 117, Sally Hartley.

12 Any challenges from the State?

13 MS. BAILEY: None from the State.

14 THE CLERK: What says the Defense?

15 MR. FELTS: Please excuse Ms. Hartley from the trial

16 of this case.

17 THE CLERK: You may return to your seat.

18 Juror Number 247, Eileen Snow.

19 What says the State?

20 MS. BAILEY: Please present Ms. Snow.

21 THE CLERK: What says the Defense?

22 MR. FELTS: Please seat Ms. Snow.

23 THE CLERK: Please take a seat.

24 THE COURT: All right, the second alternate the State

25 gets one strike, Defense gets two.

Jury Selection

38

1 THE CLERK: Juror Number 198, Pamela Napier.
2 What says the State?
3 MS. BAILEY: Please present Ms. Napier.
4 THE CLERK: What says the Defense?
5 MR. FELTS: Please excuse Ms. Napier from the trial of
6 this case.
7 THE CLERK: You may return to your seat.
8 Juror Number 290, Vincent Wilson.
9 What says the State?
10 MS. BAILEY: Please present Mr. Wilson.
11 THE CLERK: What says the Defense?
12 MR. FELTS: Please seat the juror.
13 THE CLERK: Please take a seat in the jury box.
14 THE COURT: All right, good.
15 All right, ladies and gentlemen, you will be the jury
16 that will be presiding on this first case. I'm going to
17 excuse you back to the jury room for just a few minutes while
18 I release the remainder of the jury panel. It'll also show
19 you where you will be during the trial of this case, where you
20 report to when you come to court and when you will be excused,
21 the jury room, the facilities and things of that nature back
22 there. It'll give you an opportunity to stretch your legs and
23 we'll bring you out very shortly. Now, while you're in the
24 jury room if I could get you to do me one favor and that would
25 be to select a foreperson. I know you don't know each other

1 and it might be difficult and if you're unable to select a
2 foreperson don't worry about it. I can appoint a foreperson
3 and many judges appoint the foreperson for their jury. I like
4 to give the jury the opportunity on their own to select a
5 foreperson if they're able to do so. Now, the foreperson has
6 absolutely no more authority, no more influence and no more
7 importance than any other juror. The sole function of the
8 foreperson is to act as a liaison between the Court and the
9 jury. If the jury has a need the foreperson lets the Court
10 know. If the jury has a question the foreperson lets the
11 Court know and when it's time to deliberate the foreperson
12 will preside over the jury deliberations and sign the verdict
13 form but other than that there is no more influence,
14 importance or authority of a foreperson over any other jurors.
15 The only restriction would be that as the alternates, Ms. Snow
16 and Mr. Wilson, you could not serve as foreperson for this
17 jury because you are only alternates at this point in time,
18 okay.

19 Now, when you come back into the courtroom the foreperson
20 will always occupy the first seat here closest to the witness
21 stand. The alternates will always occupy the two seats where
22 you now sit. The rest of you are at liberty to sit in
23 whichever seat you like. If you want to sit in the same seat
24 throughout the trial of the case you can do that. If you want
25 to alternate seats during the trial of the case you can do

Jury Selection

40

1 that as well. The only requirement is that the foreperson
2 sits in the first chair and the alternates occupy the
3 alternate seats unless and until you're made part of the jury.
4 If you can select a foreperson please write that foreperson's
5 name and number on a sheet of paper, give it to the bailiff
6 and we'll bring you back into the courtroom at that time. I'm
7 going to excuse you back for a brief moment while you try to
8 select a foreperson, all right. Thank you very much. If
9 everyone else would please remain seated while the jury is
10 excused.

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right, any challenges to the selection
14 or composition of the jury by the State?

15 MS. BAILEY: No, Your Honor.

16 THE COURT: Any by the Defense?

17 MR. FELTS: No, sir, Your Honor.

18 THE COURT: All right.

19 (Whereupon, remaining jury panel dismissed by court with
20 call-in instructions.)

21 THE COURT: Anything from the State until we ---

22 MS. BAILEY: No, Your Honor, the State would just
23 request that we wait to swear the jury until tomorrow in case
24 something crazy happens.

25 THE COURT: We'll probably do that. Any objection?

1 MR. FELTS: No, sir, Your Honor.

2 THE COURT: All right, what I'm thinking about doing
3 is once we get a foreperson, bring in and just kind of tell
4 them that we're going to break for the day because it's
5 already 20 till five and we'll start tomorrow morning with
6 swearing the jury, preliminary charges, opening statements,
7 and then we'll get into the trial. Okay, now, because it is
8 20 till five and tomorrow I do have some matters tomorrow
9 morning before we start the trial of this case that I'm going
10 to need to take up. So, if we go late tomorrow might be the
11 day we do it. I don't want to go too late. I mean, do you
12 still think we - well, we've got all week. Do you see any
13 problem getting it in?

14 MS. BAILEY: Your Honor, I've got seven lay witnesses
15 to call and about five law enforcement witnesses. If we - if
16 the jury comes back at 10 o'clock tomorrow we'll probably go
17 into Thursday.

18 THE COURT: Okay, well, I'm going to have them come
19 back at 9:30 tomorrow morning so they'll be in the jury room
20 so we can get started as soon as I finish my 9:30 hearing and
21 it shouldn't take too long but as soon as I finish that we'll
22 get started. So, let's be ready to go at 9:30 knowing that
23 I've got this other matter that's probably only going to take
24 about five or 10 minutes; okay?

25 MS. BAILEY: Yes, Your Honor, thank you.

Jury Selection

42

1 THE COURT: All right, have we got a foreperson yet?

2 BAILIFF: Yes, sir.

3 THE COURT: All right, let me ---

4 THE CLERK: It's juror number 70 ---

5 THE COURT: Yeah, did they write it down? Okay, have
6 them write it down, bring it back in.

7 All right, I understand we have a foreperson. All right,
8 they have selected Juror Number 75, Albert Foderaro; is that
9 how you pronounce it, as the foreperson. Let me - okay, all
10 right, anything from the State before we bring the jury in?

11 MS. BAILEY: No, Your Honor.

12 THE COURT: Anything from the Defense?

13 MR. FELTS: No, sir, Your Honor.

14 THE COURT: All right, let's go ahead and bring the
15 jury in. I'm going to go ahead and make this sheet Court's
16 Exhibit Number One.

17 (Whereupon, Court's Exhibit Number One [Foreperson
18 Selection] appropriately marked.)

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: All right, ladies and gentlemen, welcome
22 back. I understand, Mr. Foderaro, you have been selected as
23 foreperson, and I thank you for serving in that capacity. If
24 you'll always occupy the seat where you now sit. As I said,
25 Ms. Snow and Mr. Wilson, if you all will always occupy your

1 seats. The rest of you are at liberty to sit in the same
2 seats, alternate or whatever makes you feel more comfortable.
3 Now, before we break for the day it's almost five o'clock and
4 we're getting ready to break for the day, but I'm going to go
5 ahead and introduce you to our court personnel so that you
6 will know who you'll be working with during the trial of this
7 case.

8 (Whereupon, court personnel introduced by Court to jury.)

9 THE COURT: Now, we're going to go ahead and excuse
10 you for the evening. If you would, please be back in the
11 court, ready in your jury room tomorrow morning at 9:30 and
12 we'll start with the trial of the case at that point in time.
13 I'll give you some preliminary instructions at that time and
14 show you procedurally how we'll proceed during the trial of
15 this case. So, if you would please be back at 9:30 in your
16 jury room tomorrow morning. Now, I caution you even though
17 you're going home for the evening please do not discuss the
18 case even among yourselves at this point in time. It's too
19 early for deliberations. I'll charge you on the law and tell
20 you when you can deliberate about a case. So, please do not
21 talk about this case with anyone even among yourselves at this
22 point in time. Don't try to do any independent research.
23 Don't go looking for newspaper accounts. Don't watch the news
24 to try to find out anything about it. Don't go on the
25 internet and try to find out anything about it. Your

Opening Instructions by Court

44

1 decisions must be based exclusively on the testimony and
2 evidence presented during trial without any influence from any
3 outside source. So, please don't conduct any independent
4 investigations or anything of that nature. Please make sure
5 that you turn your cell phones off and your pagers off when
6 you come back into the courtroom tomorrow. I haven't heard
7 any go off. So, I'm assuming everybody did that today and I
8 want to thank you for that. Do not discuss anything about
9 this case with anyone this week, and as I said during your
10 qualifications once this week is over you're at liberty to
11 talk to whomever you want to if you want to about whatever you
12 want to but to avoid even the appearance of any impropriety we
13 ask that you not discuss this case this week while you're
14 serving as jurors. I hope everyone has a good week. I hope
15 everyone has a good evening and we'll see you back here
16 tomorrow morning at 9:30. Thank you very much and you're free
17 to go at this time. Everyone else please remain seated while
18 the jury is excused. Which way do you want them to leave?
19 This way? Yeah, let's go back through the jury room and we'll
20 go that way.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, the foreman just asked me that
24 the jury was wondering if this case would last all week long
25 or could it end earlier and I just told him that there was no

1 real way of knowing until we got into the case, that it could
2 go all week or that it could end earlier and that was the sole
3 reason for him approaching the bench. Now, I also wanted to
4 go ahead and put on the record that prior to jury selections I
5 did excuse Juror Number Seven, Mark M. Bath, from a juror in
6 this case. As I understand Mr. Harmon had represented him in a
7 guilty plea when you worked for another firm; is that correct?

8 MR. HARMON: Your Honor, that is correct. I pled him
9 guilty probably in approximately the fall of 2008 if memory
10 serves.

11 THE COURT: Okay, all right, and so, that - I wanted
12 to go ahead and put that on the record that I had already gone
13 ahead and excused Juror Number Seven, Mark M. Bath. All
14 right, anything from the State before we break for the
15 evening?

16 MS. BAILEY: Nothing further, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. FELTS: No, sir, Your Honor. Thank you.

19 THE COURT: All right, I hope everybody has a good
20 evening. As I said, I've got some preliminary matters, I've
21 got to start on some other issues at 9:15 tomorrow morning,
22 but let's be ready to go ahead and start on this at 9:30;
23 okay?

24 MS. BAILEY: Thank you.

25 THE COURT: All right, thank you very much. We'll be

Opening Instructions by Court

46

1 in recess until 9:15 tomorrow morning.

2 OFF THE RECORD

3 (On the record, June 28, 2011.)

4 (Whereupon, the following takes place outside the
5 presence of the jury.

6 THE COURT: Thank you very much, please be seated.

7 MS. BAILEY: Your Honor, before we get started the
8 State intends on using a PowerPoint presentation during its
9 opening and it's my understanding that the Defense objects to
10 one slide that we need Your Honor to rule on.

11 THE COURT: All right.

12 MS. BAILEY: My understanding is this last slide, which
13 is hand of one hand of all, is taken directly from the judges'
14 charge book distributed by the South Carolina Courts. The
15 State is just going to explain the legal principle of the hand
16 of one hand of all to the jury. That's the, that's the intent
17 in the opening and my understanding is the Defense objects to
18 that.

19 THE COURT: All right, sir, let me hear from you on
20 that.

21 MR. FELTS: Judge, you know, it's, for one, it's not
22 the State's job to explain the legal principles and then what
23 the hand of one hand of all, you know, I know that's straight
24 out of the charging book or whatever. I just - this is just
25 an inappropriate time to discuss any of that.

1 THE COURT: Okay, all right, I'm going to allow her to
2 use it in opening argument.

3 MS. BAILEY: Thank you, Your Honor.

4 THE COURT: Thank you very much. I deny your motion.

5 All right, anything from the State before we bring the
6 jury in?

7 MS. BAILEY: No, Your Honor.

8 THE COURT: Anything from the Defense?

9 MR. FELTS: Not at this time, Your Honor.

10 THE COURT: All right, let's go ahead and - I guess
11 when we bring the jury in what I'll do is do my opening
12 charges and then you all can do your opening statements but
13 we've got to swear the jury but I mean procedurally that's
14 where we are. We don't have anything else preliminary before
15 we do preliminary instructions, opening statements and then go
16 straight into the trial of the case; is that correct?

17 MS. BAILEY: Nothing from the State, Your Honor. The
18 only minor matter is going to be that several of my witnesses
19 are in lockup, even some of them that aren't Co-Defendants;
20 and so, the State would just request that when it's time for
21 those witnesses we maybe take a break, let the jury go to the
22 jury room and bring them out so they can be sitting up there.
23 Some of them are in street clothes, but let them be sitting up
24 there so the jury doesn't see them come out in cuffs because
25 they're - like Jamie Powell is really the one I'm talking

Opening Instructions by Court

48

1 about and she's incarcerated on unrelated charges.

2 THE COURT: Well, I mean, how much of a disruption is
3 there going to be if you're talking - I don't want to be
4 sending the jury out every - if you're talking about bringing
5 somebody in doing five minutes worth of testimony, sending
6 them out, bringing them back in in five minutes I don't want
7 to be doing that every time.

8 MS. BAILEY: I understand.

9 THE COURT: Because every time you send the jury out,
10 they, you know, I don't see any - I don't see any problem with
11 just bringing them in and presenting them the way you're going
12 to present them.

13 MS. BAILEY: Okay.

14 THE COURT: All right.

15 MS. BAILEY: Thank you, Your Honor.

16 THE COURT: All right, anything further?

17 MR. FELTS: Not at this time, Your Honor.

18 THE COURT: All right, let's go ahead and bring the
19 jury in.

20 (Whereupon, the following takes place in the presence the
21 jury.)

22 THE COURT: All right, ladies and gentlemen, welcome
23 back. I hope everyone had a restful evening. We're now ready
24 to start the trial on the case of the State of South Carolina
25 versus Rondell Leon Carter. I want to remind you if you have

1 any cell phones, pagers or other communication devices if you
2 would turn those off at this time. Now, before we begin this
3 trial I want to tell you that this trial will probably be
4 different from what you might expect. Many people do not have
5 a chance to attend an actual court trial as you are at this
6 point in time, and from watching television or the movies or
7 reading books you often get the impression that trials are
8 full of a lot of action, a lot of anxiety, a lot of suspense,
9 and while that might be the case here in this trial it
10 probably won't be. The primary function of this trial is to
11 find the truth, to determine what the truth is and that is
12 often a slow, deliberate, repetitive process, but I hope you
13 do find the trial educational, and I do want to thank you in
14 advance for your service as jurors in this case.

15 Now, the attorneys appearing before you are advocates for
16 the parties they represent, but first and foremost they're
17 officers of the court. They're sworn to uphold the integrity
18 and fairness of our judicial system and to help you in a
19 search for the truth. You should expect them to be
20 professional, competent and ethical in the representation of
21 their clients' interests.

22 Now, what I now say is intended to serve as an
23 introduction to the trial of this case. These remarks are not
24 a charge on the law of the case. I will instruct you on the
25 law applicable to this case at the end of the trial before you

Opening Instructions by Court

50

1 retire to consider your verdict. This is merely an
2 explanation of the procedure that we will follow in this trial
3 so that you may better understand what may be happening in the
4 case.

5 Now, the Defendant is charged by an indictment filed with
6 the court and these indictments charge the Defendant with
7 burglary in the first degree, kidnapping, possession of a
8 weapon during the commission of a violent crime, assault and
9 battery with intent to kill, a second count of kidnapping, a
10 second count of armed robbery and is it three counts of armed
11 robbery. Now, the indictment is simply the charge by which
12 the case is brought into court. It is not in any sense
13 evidence of any of the allegations it contains. The Defendant
14 has pled not guilty to this indictment. The State, therefore,
15 has the burden of proving each of the elements of the
16 indictment beyond a reasonable doubt. It will be your duty,
17 ladies and gentlemen, to decide whether the State has met that
18 burden. Your purpose as jurors is to find and determine the
19 facts. You are the sole judge of the facts in this case. If
20 at anytime I make any comment regarding the facts you must
21 disregard my comments. You are to determine the facts from
22 the testimony you hear and the other evidence introduced in
23 court. It is up to you to determine the inferences which you
24 feel may properly be drawn from the evidence. It is
25 especially important that you perform your duty of determining

1 the facts diligently and conscientiously because ordinarily
2 there is no way to correct an erroneous determination of the
3 facts by a jury. On the other hand and with equal emphasis,
4 the same law that makes you the judge of the facts makes me
5 the judge of the law. The law as given by the Court is the
6 only law you may consider. You must accept and follow the law
7 as I give it to you even though you may disagree with the law.
8 Just as I cannot tell you what the facts of this case are, you
9 cannot disagree with me about the law to be applied in this
10 case. Your job is to take the law as I give it to you and
11 apply it to the facts as you find those facts to be from the
12 testimony of the witnesses and any other evidence that is
13 introduced. After doing that you will render your verdict, a
14 true and just verdict under the solemn oath that you just took
15 as jurors. Until I advise you to begin your deliberations you
16 must not discuss this case with anyone, including your fellow
17 jurors. Do not discuss it with any friends, family members
18 and anyone involved in the case. After the case is submitted
19 to you you must discuss it only in the jury room with your
20 fellow jurors. The attorneys and parties in this case have
21 been advised that they are not to talk to you at all. So, if
22 you see anyone involved in the case and they do not even say
23 hello they're not being unfriendly. They're just following
24 the instructions of Court.

25 Now, during the trial do not read, listen to or watch

Opening Instructions by Court

52

1 any news reports about the case, this includes anything that
2 may be in the newspapers or on the Internet, the radio or
3 television. You must not consider anything you may have read
4 or heard about the case outside of the courtroom, whether
5 before or during the trial of the case. It is important that
6 you keep an open mind and not decide any issue in the case
7 until all of the evidence has been presented, the parties have
8 made their closing arguments and I have instructed you on the
9 law to be applied. It is your solemn responsibility to
10 determine the guilt or innocence of the Defendant and your
11 verdict must be based solely on the evidence as it is
12 presented to you in the trial and on the law as I instruct you
13 during and at the close of the trial.

14 Now, in just a minute the Solicitor will make what is
15 called an opening statement in which the Solicitor will
16 explain to you the issues in this case or at least what the
17 Solicitor thinks the issues in this case are. The attorney
18 for the Defendant may also make an opening statement, although
19 he is not required to do so. What the attorneys tell you
20 during their opening statements is not evidence in this case.
21 It is only their contention as to what the issues are. The
22 evidence in this case will be presented to you by testimony of
23 sworn witnesses from the witness stand and by any other
24 exhibits that may be introduced into evidence.

25 Now, in determining what the true facts are in this case

1 you must decide whether or not the testimony of the witnesses
2 is believable. It will be my responsibility to rule as a
3 matter of law as to whether certain testimony is admissible at
4 all or not, but once testimony is admitted whether or not you
5 believe it is solely for you to determine. In deciding
6 whether to believe a witness you have the right to consider
7 the interest of any witness, the bias of any witness, the
8 prejudice of any witness, the opportunity for the witness to
9 have seen the matters and things about which the witness may
10 testify and the way the witness acts on the witness stand.
11 You have the right to consider anything that is in the record
12 that will help you evaluate the testimony of the witnesses.
13 That means that it is your duty to pay close attention to
14 these witnesses, to observe the witnesses, to listen to the
15 witnesses and to pay close attention to the attorneys and to
16 the Court. Don't let your thoughts wander, but give strict
17 attention to the testimony in this case so at the end of all
18 of the testimony after the arguments of counsel and the charge
19 on the law of the Court you will then be in a position to
20 determine what the true facts are and to apply the law to
21 those facts and thus render a true and just verdict.

22 All right, any challenges or additions to the opening
23 charges by the State?

24 MS. BAILEY: Your Honor, just to clarify there's two
25 armed robbery indictments. That's the only ---

Opening Instructions by Court

54

1 THE COURT: That's what I was thinking. So, we have a
2 possession of a weapon during the commission of a violent
3 crime, two counts of kidnapping, burglary in the first degree,
4 two counts of armed robbery and one count of assault and
5 battery with intent to kill.

6 MS. BAILEY: Yes, Your Honor.

7 THE COURT: All right, that was my fault. All right,
8 anything further from the State?

9 MS. BAILEY: Nothing, Your Honor.

10 THE COURT: Anything from the Defense?

11 MR. FELTS: If I may have just a moment, Your Honor?

12 THE COURT: All right.

13 MR. FELTS: Not at this time, Your Honor.

14 THE COURT: All right, Ms. Bailey, you ready to make
15 your opening statements?

16 MS. BAILEY: Yes, Your Honor. Have we sworn the jury?

17 THE COURT: Excuse me?

18 MS. BAILEY: Has the jury been sworn?

19 THE COURT: No, they have not. We do need to swear
20 the jury. I'm glad you brought that to my attention. Thank
21 you.

22 (Whereupon, the jury is sworn by the clerk.)

23 THE COURT: All right, was there any member of the
24 jury who did not respond to the oath by saying I do?

25 (No response.)

1 THE COURT: All right, good. Ladies and gentlemen, at
2 this time we'll begin the trial of the case with opening
3 statements. As I told you during my opening charge these
4 statements are not evidence. It is simply the attorneys'
5 contention as to what the issues in this case are. Ms.
6 Bailey.

7 MR. FELTS: Your Honor, if I may, we have a matter or
8 two that we need to take up outside of the jury's presence at
9 this time.

10 THE COURT: Okay, all right, ladies and gentlemen, I'm
11 going to excuse you back to the jury room for a brief moment,
12 and the reason we do that it's not that we're trying to hide
13 anything to you but - from you, but as I told you during our
14 opening charge you and you alone decide what the facts of this
15 case are. I as the judge decide what the law to be applied in
16 this case is. Now, when we discuss the law or these legal
17 issues that I must address it often requires the attorneys and
18 me as the judge to discuss factual issues. Well, what we say
19 is not evidence; and so, we don't want anything that we might
20 say in discussing these legal matters to influence your
21 decision as determining what the facts are because you're to
22 base your determination only from the testimony from the
23 witness stand and any other evidence that has been admitted
24 without any influence from anything that I may say or that the
25 attorneys may say; and so, that's why we excuse you back to

Motions

56

1 the jury room. So, while I address this legal issue I'm going
2 to excuse you back to the jury room for just a minute and
3 we'll bring you back out in just a second. Thank you very
4 much.

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right, sir.

8 MR. FELTS: Thank you, Your Honor. Your Honor, first
9 of all, I need to at this time move to have the witnesses
10 sequestered. I know there's at least two in here right now.
11 I'm not sure how many more but we definitely need to do that
12 because credibility of these witnesses are going to be at
13 issue in this case.

14 THE COURT: All right, Ms. Bailey.

15 MS. BAILEY: Your Honor, the two witnesses that are in
16 here at the moment are victims and have a statutory and
17 constitutional right to remain in here for the duration of the
18 trial.

19 THE COURT: All right.

20 MS. BAILEY: I don't have a problem with the rest.
21 None of the other witnesses are in here but we can take care
22 of sequestering the rest.

23 THE COURT: All right, now, who are the two victims?

24 MS. BAILEY: Christina Carroll and William Douglas.
25 They're both indicted victims in the case.

1 THE COURT: All right, all right, I'll allow Ms.
2 Carroll and Mr. Douglas to stay in the courtroom. The other
3 witnesses for both the State and the Defense, all witnesses
4 will be sequestered. Okay?

5 MS. BAILEY: Thank you, Your Honor, and Your Honor, for
6 clarification Mr. Steve Brown is not on my witness list. He
7 did participate in some of the interviews, could potentially
8 be called as a witness.

9 THE COURT: Wait a minute, did we question the jury?
10 If he wasn't on the witness list and we didn't ask the jury
11 about whether they knew him.

12 MS. BAILEY: We did ask the jury if they knew any
13 employee of the Fifteenth Circuit Solicitor's Office and he is
14 employed by the Solicitor's Office but regardless ---

15 THE COURT: Oh, okay.

16 MS. BAILEY: --- he's, he's the one investigator I
17 would request, yeah. I don't anticipate calling him, Your
18 Honor. I don't.

19 THE COURT: Okay.

20 MR. FELTS: Judge, he - his name wasn't on the list.
21 I mean, I ---

22 THE COURT: Yeah, I'm not going to allow - if his name
23 wasn't on the list I'm not going to do it.

24 MS. BAILEY: That's fine. I just wanted to make sure
25 he could stay in here.

Motions

58

1 THE COURT: He can stay in here because he won't be
2 testifying. All right, anybody else that's going to be
3 testifying other than Ms. Carroll and Mr. Douglas we'll need
4 to sequester them.

5 MR. FELTS: Judge, I also - the State is seeking to -
6 if my client is convicted to seek life without parole and they
7 served notice on his prior attorney who was Eric Fox and that
8 was back looks like document's dated September 22nd of 2009. I
9 got this document in discovery but I've never got one to me
10 personally as far as Rondell Carter and James R. Felts, IV,
11 Mr. Carter's attorney. So, I'm going to ask that that - for
12 those reasons that the life without parole notice be excluded
13 as far as or that they not be allowed to seek that simply
14 because they hadn't followed the statutory requirement.

15 THE COURT: All right, Ms. Bailey

16 MS. BAILEY: Your Honor, it was served personally on
17 Mr. Rondell Carter in open court on the record, that same term
18 of court on September 27th of 2009. I believe you were the
19 judge then.

20 THE COURT: All right, all right, I'm going to deny
21 your motion. I'm going to allow them to seek it.

22 MR. FELTS: Judge, the final motion we need to take up
23 is it happened this morning, there is a bag of evidence that
24 is here that's behind Ms. Bailey. There's a lot of stuff in
25 it that, you know, it's alleged evidence from this event.

1 There's no evidence custodian here. I'm not sure where it
2 came from and the contents of it, Judge, you know, I'm going
3 to ask that everything in that bag be excluded at this time
4 simply because there's no way to know of its authenticity
5 perhaps and there's no evidence custodian here and there's no
6 way to know where it came from.

7 THE COURT: Okay, well, I don't know if they're going
8 to be able to establish a chain of custody or not. I'm not
9 inclined to deny - I'm not inclined to grant your motion in
10 limine but certainly they're going to have to lay the
11 foundation when it comes time to introduce it.

12 MR. FELTS: And Judge, just for - I'm sorry.

13 THE COURT: Go ahead

14 MR. FELTS: Just for the record, specifically, there's
15 a firearm in the bag. There are bandannas in the bag. There
16 are also shell casings from a firearm that are in the bag and
17 there's some other pictures that are in the bag. So, you
18 know, I - we don't know where - I don't know where any of that
19 stuff came from. Like I said, there's no evidence custodian
20 that's here with the bag, and so ---

21 THE COURT: No, but I mean, I'm assuming - was it
22 disclosed to him the chain of custody?

23 MS. BAILEY: Your Honor, none of this evidence is
24 fungible. We don't have any DNA. We don't have any drugs.
25 It's all going to be authenticated by identification and

Motions

60

1 tomorrow or - yeah, tomorrow Michael Thacker, the evidence
2 custodian, will testify as to how he kept it, how he sealed it
3 and he can testify as to the condition that he left it in.

4 THE COURT: Okay, I'm going to deny your motion in
5 limine, but you can certainly raise it if at the time they
6 seek to introduce it they don't lay the proper foundations.

7 MS. BAILEY: Your Honor, I will be using several pieces
8 of the evidence for identification today but not moving them
9 in until they've been properly ---

10 THE COURT: Well, as long as they're not presented to
11 the jury and the jury doesn't see them and the jury doesn't
12 get to observe it until they are put into evidence. You can't
13 say, "We're not putting it into evidence," and having the jury
14 look at it and consider it. They only look at it and consider
15 it once it becomes a piece of evidence.

16 MS. BAILEY: Your Honor, I'm not sure - some of it is
17 actual like jewelry, a bandanna. I'm not sure how to have the
18 witness identify it to authenticate it without the jury seeing
19 it.

20 MR. FELTS: Judge, she just ---

21 THE COURT: But ---

22 MR. FELTS: She can't show it to them. I mean, she
23 can hide it when she takes it up to the stand, I mean, but
24 they cannot see that.

25 MS. BAILEY: But once I hand it to the witness on the

1 stand they're going to actually see what it is. Your Honor,
2 today I won't ---

3 THE COURT: Well, why aren't you putting it into
4 evidence then?

5 MS. BAILEY: Because I don't have the evidence
6 custodian. I mean, today I'm going to say, "Did it look like
7 this?" That would be the extent of my, of my questioning on
8 it.

9 THE COURT: Yeah, but the - you might need to go ahead
10 and get the evidence custodian down here because the jury is
11 not supposed to consider anything that is not evidence that is
12 not - unless you're using it strictly for demonstrative
13 purposes, other than a demonstrative evidence the jury is not
14 supposed to consider it until it is authenticated, identified
15 and deemed admitted into evidence.

16 MS. BAILEY: Okay, thank you, Your Honor.

17 THE COURT: All right, anything else?

18 MR. FELTS: If I could have just one moment, Your
19 Honor?

20 THE COURT: You know, I'm still not going to rule that
21 it's inadmissible. They're still going to have to lay the
22 foundation. I'm just letting the State know that you might
23 need your evidence custodian here if you think the jury's -
24 I'm not going to allow the jury to see anything today that is
25 not part of the evidence. Okay?

Motions

62

1 MS. BAILEY: Thank you, Your Honor.

2 THE COURT: All right.

3 MR. FELTS: Judge, just to expound upon that there are
4 some items arguably I would submit are fungible, those being
5 these bandannas or whatever they are that are, that are in
6 that bag; and so, I ---

7 THE COURT: How are they fungible?

8 MR. FELTS: Well, I'm not sure, I mean, a bandanna, I
9 mean, a bandanna is kind of a bandanna, Judge, I mean, it's
10 hard to - it's hard to distinguish. A fungible good or a
11 fungible item is something that you can't necessarily
12 distinguish from another one; and so, I mean, you think about
13 a bandanna what a bandanna looks like.

14 THE COURT: Yeah, but I'm going to still deny your
15 motion in limine. I'm not going to grant it inadmissible now.

16 MR. FELTS: Thank you.

17 THE COURT: They're - I'm going to give them the
18 opportunity to lay the foundation, make the identifications
19 and proceed that way.

20 MR. FELTS: Thank you, Your Honor.

21 THE COURT: All right

22 MS. BAILEY: Thank you, Your Honor.

23 THE COURT: All right, anything else before we get
24 started?

25 MS. BAILEY: Nothing from the State, Your Honor.

1 THE COURT: Anything from the Defense?

2 MR. FELTS: No, sir, Your Honor, that's all we got at
3 this point. Thank you.

4 THE COURT: All right, let's go ahead and bring the
5 jury back in.

6 (Whereupon, the following takes place in the presence of
7 the jury.)

8 THE COURT: All right, ladies and gentlemen, welcome
9 back. Ms. Bailey, you ready to make your opening statement?

10 MS. BAILEY: Yes, Your Honor.

11 THE COURT: All right.

12 MS. BAILEY: May it please the Court?

13 THE COURT: Yes, ma'am.

14 MS. BAILEY: Greed, greed is a powerful motivator.
15 Some people work to get their wealth and some people just
16 steal it from other people. This is a case about greed.

17 Over the next couple of days you're going to hear lots of
18 testimony. You're going to see some evidence. You're going
19 to hear about an incident that happened on January 23rd of
20 2009, an incident that was motivated by greed. We'll get back
21 to that in just a moment, but first let me introduce myself.
22 My name is Erin Bailey and I am an assistant solicitor here in
23 Georgetown County. Sitting at counsel table with me right now
24 is Steve Brown. Steve is one of our investigators in house at
25 the Solicitor's Office. He helps me with the technology and

Opening by State

64

1 helps me with some of the exhibits. You may also see David
2 Richardson sitting with me. He's not in the courtroom at the
3 moment but he is also an assistant solicitor here in
4 Georgetown and Chelsea Moore who is a third-year law student
5 who is working with us this summer at the Solicitor's Office.

6 In South Carolina we call prosecutors solicitors,
7 prosecutors, DA's, state's attorneys, solicitors, there's a
8 bunch of different names for the same thing. I represent the
9 State of South Carolina, and when a crime is committed in this
10 county it's my job to prosecute that crime.

11 Sitting back here in the first row are William Douglas
12 and Christina Carroll. William and Christina are the victims
13 in this crime. On January 23rd of 2009 the State will show
14 over the next few days that Rondell Carter along with three
15 Co-Defendants, Herman McCray, Jr., Robert Richardson, Jr., and
16 Matthew Cobb, Jr., they all got together on January 23rd and
17 Rondell decided that they needed to do a lick. Now, a lick
18 means a robbery. They were looking for a target to rob. They
19 decided on William Douglas. They went to William Douglas's
20 house on Mossdale Drive. Mossdale Drive is in the country.
21 It's way out in the Carvers Bay, Rose Hill section of
22 Georgetown County. It's on the river way down a dirt road.
23 They went to William's house on Mossdale Drive and he wasn't
24 there. So, they went inside, waited for William to come home.

25 When William and Christina came home the Defendants,

1 including Rondell Carter, were waiting for William and
2 Christina. They greeted them at the front door with a gun.
3 They demanded that they take things out of their pockets.

4 At several points along the way, Christina fought back.
5 Christina fought back before she entered the house and for
6 that she got hit in the head with a gun. Christina fought
7 back inside the house. She thought she saw an opportunity to
8 get out and for that she got shot in the leg. These three Co-
9 Defendants, including Rondell Carter, demanded large
10 quantities of money from William Douglas. Now, it was a
11 Friday night. January 23rd, 2009, was a Friday night and they
12 wanted thousands of dollars from Mr. Douglas. There is
13 nowhere to get thousands of dollars on a Friday night. So,
14 Mr. Douglas tried to explain that to them that you just can't
15 go - there's no banks open. There were no banks open
16 Saturday, the next day. So ultimately Mr. Douglas convinced
17 Mr. Carter to try to go cash some checks.

18 While they were out trying to cash checks, trying to get
19 Mr. Carter some money so that he would leave them alone
20 finally, is finally when these folks got some help. Mr.
21 Douglas was able to ask for help. When the police came on the
22 scene we had Mr. Douglas in the car with Mr. Carter. Mr.
23 Douglas immediately requested assistance. He asked that police
24 go back to the house on Mossdale Drive. When police got to
25 the house on Mossdale Drive they found Christina with a gaping

Opening by State

66

1 head wound, with a gunshot wound in the leg, asking for help.
2 They found Matthew Cobb, Jr., and Herman McCray, Jr., inside
3 the house hiding from the police and they found several pieces
4 of evidence there at the scene.

5 You're going to hear testimony from several people over
6 the next few days all about what happened on January 23rd into
7 the early morning hours of January 24th. Now, this was in
8 2009. So, it's a while ago, and we got a bunch of different
9 people who are going to tell you all what happened. So, I'm
10 going to warn you right now, not all the stories are going to
11 match up exactly. Now, as the jury it is your job to take the
12 law. The Judge will tell you what the law is, to take the
13 facts as you hear them here in court and to apply the facts to
14 the law. So, what I'm going to ask that you do over the next
15 couple of days is pay real close attention to the facts but
16 keep the law in mind because in the end that's what you're
17 going to have to do is apply those facts to the law.

18 Now, first I want to explain a little bit of the law
19 that's necessary for you all to analyze this case so that you
20 can go into it thinking about what's going on. Now, on your
21 monitors in front of you I'm going to explain to you the
22 different crimes that Mr. Carter is charged with. First of
23 all he's charged with first-degree burglary. Now, when you
24 hear the word burglary you think of a cat burglar wearing all
25 black sneaking up in the middle of the night. In the State of

1 South Carolina that's not necessarily what that means.
2 Burglary means an unlawful entry into someone's house, into a
3 dwelling where someone lives without consent, uninvited. Now,
4 keep in mind they don't have to break in. There's no
5 requirement of a breaking. You don't have to break out a
6 window or jimmy a lock. They just have to enter someone's
7 house without consent and they have to intend to commit a
8 crime once they're inside. Now, for it to be a first degree
9 burglary there's some more things that, that I have to prove.
10 I could prove to you that when they entered the house without
11 consent they were armed with a deadly weapon or that they
12 caused physical injury to a non-participant of the crimes and
13 not to a Co-Defendant but to a victim or that the Defendant
14 used or threatened to use a dangerous instrument once inside
15 or that the Defendant displayed what was or appeared to be a
16 knife or a firearm once inside. So, to review, I have to
17 prove to you that Mr. Carter entered a dwelling without
18 consent with the intent to commit a crime therein and one of
19 the following things. So, that is what I would need to prove
20 the burglary in the first degree.

21 The next crime that Mr. Carter is charged with is assault
22 and battery with intent to kill. Assault and battery with
23 intent to kill is pretty straightforward. It's an unlawful
24 attempt to commit a violent injury to the person of another
25 with malicious intent accompanied by present ability to

Opening by State

68

1 complete the act. Mr. Carter is charged with assault and
2 battery with intent to kill for the shooting of Ms. Christina
3 Carroll.

4 The next crime that he's charged with is kidnapping.
5 Now, when you hear the word kidnapping I know you think
6 there's a ransom and there's a child involved and across state
7 lines. That's what you see on TV. In the State of South
8 Carolina a kidnapping is defined a little bit differently. In
9 the State of South Carolina basically a kidnapping is not
10 letting somebody go where they want to go or as the
11 legislature defines it more specifically an unlawful seizure,
12 confining, inveigling, decoying, abducting or carrying away of
13 a person by any means without the authority of law. Mr.
14 Carter is charged with the kidnapping of William Douglas and
15 Christina Carroll.

16 The next crime that he's charged with is an armed
17 robbery. Armed robbery is taking or attempted taking and
18 carrying away of the personal property of another with the
19 intent to deprive him of possession of that property by use of
20 force, threats or intimidation and while armed with a deadly
21 weapon or having in possession an object with which the victim
22 believed was a deadly weapon. Mr. Carter is charged with the
23 armed robbery of William Douglas and Christina Carroll.

24 Finally, Mr. Douglas is charged - Mr. Carter is charged
25 with possession of a weapon during the commission of a violent

1 crime. Now, this is the only tricky one. You have to convict
2 him of one of the other crimes before you can consider this
3 charge. So if you find he didn't commit a violent crime he
4 couldn't have possessed a weapon during the violent crime.
5 So, the Defendant has to be convicted of committing or
6 attempting to commit a violent crime and at the time of the
7 crime the Defendant had a firearm or visibly displayed what
8 appeared to be a firearm.

9 Finally, there's one more legal principle that I would
10 like to explain to you all before you consider the evidence.
11 It is a legal principle called the hand of one is the hand of
12 all. The Judge is going to explain this to you. The hand of
13 one hand of all principle in South Carolina says that if a
14 crime is committed by two or more people who are acting
15 together in committing the crime the act of one person is the
16 act of all. A person who joins with another person to
17 accomplish an illegal purpose is criminally responsible for
18 everything that is done by the other person which occurs as a
19 natural consequence of the acts done in carrying out the
20 common plan or purpose. If two or more people act together
21 and they assist each other in committing an offense the act of
22 one is the act of all or as we sometimes say the hand of one
23 is the hand of all. What does that mean? That means that Mr.
24 Carter along with his Co-Defendants planned to go commit a
25 crime. It means that what one person committed in that - in

Opening by Defense

70

1 the course of that crime they are all criminally responsible
2 for it. What one person did they are all responsible for.

3 Now, you're going to hear a lot of testimony. You're
4 going to see a lot of evidence over the next couple of days.
5 So, what I'm going to ask you to do is to keep these legal
6 principles I have just explained to you in mind, to try to
7 focus on what's important. You're going to hear some
8 conflicting testimony. You might see some conflicting
9 evidence, but what I have to prove is what I just explained to
10 you. What I have to prove are the elements of each of these
11 crimes, and I have to prove that Mr. Carter is the one who
12 committed these crimes or that it was part of a common scheme
13 for the common purpose under the hand of one hand of all. So,
14 as you listen to this testimony try to focus on the elements,
15 try to focus on the crimes that have been charged against Mr.
16 Carter. I ask that you pay close attention and I appreciate
17 your jury service. I'll do my best to keep it brief and to
18 let you all go home to places that you'd rather be. Thank
19 you.

20 THE COURT: All right, Mr. Felts.

21 MR. FELTS: May it please the Court?

22 THE COURT: Yes, sir.

23 MR. FELTS: Ladies and gentlemen of the jury, I
24 haven't really gotten the chance to introduce myself. I'm
25 Jase Felts. I'm a lawyer here in Georgetown, practice right

1 across the street over next to Sherwin-Williams Paint Store.
2 My law partner over here is Gerald Harmon and we're here
3 representing Mr. Rondell Carter. Rondell, stand up for me.
4 This is Rondell Carter.

5 Now, this is a really serious, serious set of charges
6 that my client been charged with, and the Solicitor just told
7 you that, you know, there's absolutely some conflicting
8 evidence and conflicting testimony and I agree with you and
9 you're going to find out about that. All right, and she just
10 talked to you about the law of the State of South Carolina
11 about what the legislature defined certain charges and
12 whatnot, and she went through a bunch of them and then she
13 came to the very last one and said, "Now, this one's a little
14 tricky." I disagree with that. I take major exception to
15 that because I'm going to tell you right now and you're going
16 to see it, all of them are tricky, every single one of them
17 are tricky and I want you to be thinking about this one thing,
18 excuse me, when you're listening to all of this conflicting
19 testimony, conflicting evidence and that is things are not
20 always as they seem, things are not always as they seem.

21 Now, let me tell you a little bit about this great nation
22 and our criminal justice system. Ms. Bailey touched on it
23 just a little bit. She talked about proof and she had to
24 prove stuff. When someone is accused of committing a crime in
25 this country they are innocent until proven guilty, cloaked in

Opening by Defense

72

1 innocence until proven guilty. It's her job to prove every
2 single element of every single charge that my client is
3 charged with, and she has to prove it beyond a reasonable
4 doubt, and that, that is a burden of proof and there's a
5 couple of different burdens of proof in the law and I want to
6 talk about those, but that's absolutely her burden. That
7 burden does not fall on me. That burden does not fall on my
8 client. My client doesn't have to say one word. She has to
9 prove everything. We don't have to say anything.

10 Now, let's talk about these burdens. There's a couple of
11 them that the law recognizes and I'm going to go from kind of
12 low, very, very low burden to the highest burden that we've
13 got. The highest burden is beyond a reasonable doubt. That's
14 her burden. The first burden is probable cause. Probable
15 cause is the lowest burden in the law, very, very, very low.
16 That is all that it takes, probable cause, for someone to be
17 arrested for a crime, charged with a crime, and I submit to
18 you that probable cause is if a police officer thinks that a
19 crime was committed then that's probable cause, very low,
20 absolute opposite end of the spectrum from beyond a reasonable
21 doubt.

22 All right, let's go to number two. Number two is
23 preponderance of the evidence. Now, yesterday when we had our
24 jury selection and qualification and I know you guys had a
25 great day doing that because it sure was fun. The Judge

1 talked about civil cases and a breach of contract or a car
2 wreck. That is where a preponderance of the evidence burden
3 comes in. All right, in order to be able to succeed against
4 somebody who hits you with their car, they breached a contract
5 or whatever, all the person has to show is a preponderance of
6 the evidence. That's the second step up.

7 All right, let's go to number three. That's called clear
8 and convincing evidence. Folks, for DSS to come take a child
9 of yours, a child that you gave birth to, they have to show by
10 clear and convincing evidence that they can - that you've done
11 something wrong for that child. That's a, that's a
12 substantial burden. I think everybody would agree with that.
13 All right, that's number three.

14 The next stop, last stop, final stop, beyond a reasonable
15 doubt, the highest burden in the law, the highest burden in
16 the law, and that's Ms. Bailey's burden. Before you can find
17 my client guilty of anything she has to prove, has to have
18 proven each and every element of every offense beyond a
19 reasonable doubt, but think about that when you're listening
20 to all this testimony that you're going to hear and all this
21 conflicting testimony I submit you're probably going to hear.

22 Now, remember I told you things aren't always what they
23 seem and I told you that because the State cannot prove my
24 client, Rondell Carter, committed any of these charges; and
25 so, the only verdict that you can find at the close of all the

Opening by Defense

74

1 evidence is a verdict of not guilty on every single one of
2 these charges. Thank you.

3 THE COURT: All right, ladies and gentlemen, we will
4 begin the trial of the case or the presentation of evidence in
5 this case with the testimony of witnesses.

6 Ms. Bailey, you can call your first witness

7 MS. BAILEY: Thank you, Your Honor. The State calls
8 Rosa Milton.

9 THE COURT: All right.

10 MS. MILTON: Place my right hand on the Bible?

11 BAILIFF: Left hand.

12 THE COURT: Place your left hand on the Bible, raise
13 your right hand. There you go.

14 Whereupon, Rosa L. Milton was called to the stand, duly
15 sworn by the clerk and testified as follows:

16 THE CLERK: Thank you. Please be seated and state
17 your name for the record.

18 MS. MILTON: My name is Rosa Lee Milton.

19 THE COURT: Sorry, ma'am, please speak into the
20 microphone and give us your name again.

21 MS. MELTON: Rosa L. Milton.

22 THE COURT: All right, thank you, Ms. Milton. All
23 right, Ms. Bailey.

24 MS. BAILEY: Thank you.

25 DIRECT EXAMINATION

1 BY MS. BAILEY:

2 Q Ms. Milton, please remember to speak up and speak loud,
3 all right, so we can all hear you. All right, Ms. Milton, did
4 you have any occasion to be on Mosssdale Drive on January 23rd,
5 2009?

6 A Yes, ma'am.

7 Q All right, tell us about how you got there.

8 A I was riding with a friend of mine who was riding with
9 William and Christina.

10 Q Okay, what was your friend's name?

11 A Thermond Seward.

12 Q All right, and so, how did you end up at Mosssdale, at the
13 Mosssdale house?

14 A Well, I was with Thermond and he was with them and he was
15 going to pick up a truck so he could tow his car back from
16 Columbia and that's how I ended up there.

17 Q Okay, and so, in addition to Thermond who else were you
18 with?

19 A William and Christina.

20 Q Okay, do you see them here in the courtroom? Who are
21 they?

22 A Yes, ma'am, in front of me.

23 Q Okay, and what happened when you arrived at that house?

24 A Excuse me, when we got there it was just we were taking
25 groceries out of the truck and I don't know, everybody went

Rosa Milton - Direct by Ms. Bailey

76

1 inside. So, when I got to the door I was met by someone that
2 says, "Oh, no, baby girl, wrong place, wrong time, come on
3 in."

4 Q And do you know who that was who met you at the door?
5 And ---

6 THE COURT: You need to give, I'm sorry, you need to
7 give a verbal response. We have a court reporter.

8 A Yes, ma'am.

9 THE COURT: Thank you.

10 Q Okay, and did you know that - had you ever met or seen
11 that person before that day?

12 A Yes.

13 Q Okay, and where had you seen that person before that day?

14 A At Thermond's house.

15 Q Okay, and so, when you saw that person at the door who,
16 who was it?

17 A Rondell Carter.

18 Q And is he here in the courtroom today?

19 A Yes, ma'am.

20 Q And where is he?

21 A To my right.

22 Q Okay, where is this - I'm going to need you to say
23 specifically where he is.

24 A Right at the table over there.

25 Q Okay, and so, when you walked in, and so, what did he say

1 to you?

2 A He was like, "Oh, no," ---

3 MR. FELTS: Objection, Your Honor, hearsay.

4 MS. BAILEY: Your Honor, it's the Defendant's, it's a

5 statement of party opponent.

6 THE COURT: Yeah, I'm going to allow it. Go ahead.

7 A He said to me, "Oh, no, baby girl, wrong place, wrong

8 time."

9 Q And was he holding anything?

10 A Yes, ma'am.

11 MR. FELTS: Objection, Your Honor.

12 THE COURT: Overruled. I'll allow it.

13 A Yes, he was.

14 Q What was he holding?

15 A A gun.

16 Q Okay, and can you describe that gun?

17 A In a way, no. All I know it was black. It was a gun,

18 maybe a nine.

19 Q Okay, what color was it?

20 A Black, dark gray, steel gray, but it was a dark in color.

21 Q Okay, and what happened next?

22 A I went on in.

23 Q All right.

24 A With the others.

25 Q And then what happened once you were inside the house?

Rosa Milton - Direct by Ms. Bailey

78

1 A My belongings were taken.

2 Q Okay.

3 A And I was told to sit down.

4 Q Do you remember what belongings were taken from you?

5 A Cigarettes, cigarette lighter, \$15 in cash.

6 Q All right, and did you ever get any of those belongings
7 back?

8 A All except for my money.

9 Q Okay, and after you were told to sit down what happened,
10 what do you remember next?

11 A I sat down and I questioned the person next to me which
12 was Jamie and I asked her what did she think was going to
13 happen. I asked her. She thought we were going to die.

14 MR. FELTS: Objection, hearsay.

15 THE COURT: No, that's what she said. I'll allow it.
16 I'll sustain it as to what anybody else said.

17 Q Okay, so, what happened after you had a conversation with
18 Jamie?

19 A We were sitting there for a while and then Mr. Carter
20 called me and Thermond in the room.

21 Q Okay, and what happened then?

22 A He let us go.

23 Q All right, and did you go?

24 A Of course.

25 Q Okay.

1 A Right then and there my question was asked. I knew we
2 weren't going to die.

3 Q Okay, and where did you go after you left?

4 A Straight to Thermond's house.

5 Q All right, and what happened after you got to the house?

6 A Well, we were told when we left there to go there leave
7 the keys in the truck and not go and say anything or call
8 anybody.

9 Q And who told you that?

10 A But we couldn't call anybody because he - they kept the
11 cell phone. So, and there's no house phone there.

12 Q Okay, and who told you that?

13 A Mr. Carter.

14 Q Okay, and so, why - just to clarify, why didn't you call
15 for help?

16 A Look, I was glad to get out of there alive. I live
17 beside - my kids live next door to me. He made a call before
18 we left there saying - and he told us what happen to us if we
19 did anything about it. So, that's why.

20 Q So, when - let's back up just a little bit to when you
21 were at the house, at the Mossdale Drive house. Who else was
22 there at the house?

23 A There was Christina. There was William. There was
24 Thermond. There was me. There was Jamie and it was four of
25 them.

Rosa Milton - Direct by Ms. Bailey

80

1 Q And when you say them what do you mean?

2 A Mr. Williams, Richardson and two others I don't know.

3 Q Okay, but were they working together or how did you know
4 they were ---

5 A I guess so. All of them had guns.

6 Q Okay, and did you see anybody - did you see anything
7 happen to Christina while you were there?

8 A I'm going to put it like this. I know when she went out
9 - she was outside. When she came back I heard - we heard a
10 gunshot go off, but when she came - I don't know if she got
11 shot or what but when she came back in the door she was
12 bleeding from the forehead.

13 Q Okay.

14 A Okay, and another point in time we're, we're sitting on
15 the couch and the kitchen counter is behind us. She was in
16 the kitchen and a gun went off and she got shot in the leg.

17 Q Okay, and did you see that gunshot wound at some point?

18 A At some point, no, I never got to see it. I never did
19 get to see the gunshot wound, but I did see the gash in her
20 forehead when the - when she came through the front door
21 because the blood was coming down her face.

22 Q Okay, and since you were there did it seem to you that
23 William or Christina could leave the house at the time?

24 A No, none of us could really, not, not while we were
25 there, not until they told us we could leave.

1 Q Okay, and did it seem to you like there was one person
2 who was calling the shots?

3 MR. FELTS: Objection, improper opinion.

4 A That ---

5 THE COURT: No, I'm going to allow it. Overruled.
6 Go ahead.

7 Q One person made the decisions?

8 A That, that I won't say because it was - didn't look like
9 one person was in charge. I can't - I would not say, no, I, I
10 - that I'm not going to say yeah to it, didn't look like one
11 person was in charge because everybody was talking. So, I
12 can't say.

13 Q But who gave you instructions?

14 A Well, the wrong place wrong time Mr. Carter did. When he
15 told me that to come on in and sit down he did and when he
16 told me - told us that we can leave he did.

17 Q Okay.

18 A But now the empty your pockets was another guy.

19 Q Okay.

20 A Which I don't know, he's not ---

21 Q All right, and had you planned on being at that house
22 that day?

23 A Oh, God, no.

24 Q Okay, had Thermond planned on being at that house that
25 day that you knew of?

Rosa Milton - Cross by Mr. Felts

82

1 A I knew the plan was to pick up the truck, but no, it
2 wasn't planned for us to go that far. We weren't supposed to
3 go over there but we went there because and there was an
4 argument between William and Christina.

5 Q Okay.

6 A And he told her to drop him off.

7 Q Okay, all right.

8 A But she was supposed to drop Thurmond off first to get
9 the truck but no, not there.

10 Q All right.

11 MS. BAILEY: Beg the Court's indulgence.

12 THE COURT: All right.

13 MS. BAILEY: The State has no further questions for Ms.
14 Milton at this time.

15 THE COURT: All right, cross examination.

16 MR. FELTS: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. FELTS:

19 Q Good morning, Ms. Milton.

20 A Good morning.

21 Q You, you never called the police; did you?

22 A No.

23 Q You never called the police to report an armed robbery or
24 burglary or ABWIK or kidnapping or anything like that; did
25 you?

1 A I can't say it was a burglary because I didn't know
2 nothing was taken. I can't say it was an armed robbery
3 because I didn't see nothing taken, okay. I really didn't
4 know what was going to happen after he let us go. So,
5 anything that happened after he let us go they would have to
6 report that. Do you understand what I'm saying? I mean, we
7 were there. We weren't supposed to be there; okay, but ---

8 Q But you didn't call the cops?

9 A Huh?

10 Q You didn't call the cops?

11 A I don't know what happened afterwards. So, I can't, I
12 mean, no, we didn't call the cops, but I can't actually say
13 what happened when we left there. I had no way of knowing. I
14 wasn't in touch with them and they wasn't in touch with me.
15 No, I didn't call the cops. You know why? Because they were
16 still there. They got - I mean, if I call the cops and the
17 cops busted in there something could have happened to the
18 people that were there. They, they, they, they, they made a
19 phone call before we left there. Okay, I have family. I live
20 with people. There are so many kids that live near me
21 anything could have happened, okay. Oh, but come daylight I
22 was going to call the cops but by daylight everything was
23 over.

24 Q But you didn't call the cops?

25 A No, I didn't again, no, I didn't.

Rosa Milton - Cross by Mr. Felts

84

- 1 Q And everything was over by daylight?
- 2 A By daylight it was done.
- 3 Q How do you know that if you weren't there?
- 4 A I got a phone call.
- 5 Q So, you - you're friends with these two people right
- 6 here, William and Christina; aren't you?
- 7 A Yes, I am, I think so.
- 8 Q So, you're telling this jury that you left Mossdale Lane?
- 9 A I left them. I'm more ---
- 10 Q Ms. Milton, answer my question, please. You left ---
- 11 THE COURT: Wait a minute.
- 12 Q --- Mossdale Lane, left your friends at some - you
- 13 testified that there was a ---
- 14 A What was I supposed to did?
- 15 Q --- everybody - please, let me finish. There was a
- 16 robbery or something going on and then you left your friends
- 17 there and didn't call the cops?
- 18 A What was I supposed to do?
- 19 Q Call the cops and you didn't do it.
- 20 A No, I didn't, again.
- 21 Q Ms. Milton, you use drugs?
- 22 A I have.
- 23 Q You smoke crack cocaine?
- 24 A I have.
- 25 Q You smoked crack cocaine at Mossdale Drive with William

1 and Christina?

2 A No, I haven't. No, that was the first time I'd been
3 there and it was the last time I was there. Okay, it was a
4 new house he had. I had never been to the house. He wanted
5 to show us the house before but I had never been to that
6 house. That was the only time I was there and it was the last
7 time I was there.

8 Q But you admit you smoke crack cocaine?

9 A I have.

10 Q Did you smoke crack cocaine today?

11 A No.

12 Q Did you smoke it yesterday?

13 A No.

14 Q Did you smoke it the day before that?

15 A No.

16 Q Were you under the influence of any other drugs?

17 A No.

18 Q When you were at Mossdale?

19 A No.

20 Q You had a lighter in your pocket?

21 A I smoke cigarettes, sir.

22 Q Did you drink any alcohol?

23 A No, I don't.

24 Q Do you remember what night of the week this was?

25 A You know what, I really don't. It's been a while now but

Rosa Milton - Cross by Mr. Felts

86

1 I think it was a Saturday if I'm not mistaken, may have been.

2 Q You weren't going out there to party or anything like
3 that to have drinks and smoke crack or anything like that?

4 A I wasn't supposed to even be there, no.

5 REPORTER: I can't get but one at the time.

6 THE COURT: Hold it, yeah, listen, please do not
7 answer the question until he has finished answering [sic] the
8 question completely. Then you can answer it and explain it
9 but we have a court reporter who can't pick up both people ---

10 A I got you.

11 THE COURT: --- talking at one time, okay?

12 A Yes, sir; yes, sir.

13 THE COURT: All right.

14 Q It was a weekend.

15 A Okay.

16 Q It was a weekend; correct?

17 A I guess. I don't know.

18 Q You just testified that it was a Saturday; didn't you?

19 MS. BAILEY: Objection, Your Honor, that's not a question.

20 A I said I think, it'd be ---

21 THE COURT: Hold it. Hold it. When there's an
22 objection quit talking. Let me hear your objection.

23 MS. BAILEY: Your Honor, at this point he's just
24 arguing with the witness. There was no question there. He
25 just stated a fact to her.

1 THE COURT: Okay, overruled. I'll allow the question
2 but keep it in the form of a question. Go ahead.

3 A Can I say this?

4 THE COURT: Let him ask his question. He's going to
5 re-ask the question and then you can answer it and explain
6 your answer.

7 Q You - yes or no question, did you just testify that it
8 was a Saturday night?

9 A You asked me if it was a weekend. I said I don't know
10 what day of the week it was. I think it was a Saturday.

11 Q Okay.

12 A That's exactly what I said.

13 Q Okay.

14 A Okay.

15 Q Now, you said something about loading groceries or
16 something like that?

17 A I was helping them unload the groceries. They had
18 groceries on the back of their truck.

19 Q They being these two people right here, William and
20 Christina?

21 A Right.

22 Q Okay, and so, you're going to unload the groceries, you
23 take them into the house and hang out and do whatever?

24 A No, I wasn't about to hang out, but since they were there
25 they decided to take the groceries off of the truck, why ride

Rosa Milton - Cross by Mr. Felts

88

1 | them - why take them back out again when I live out - we lived
2 | out in Bloomingville. You understand me?

3 | Q And you were in Pleasant Hill at this time?

4 | A Is that where - that's - is that where it is? I don't
5 | actually know where I was. It was dark.

6 | Q Do you not know where you were because you were under the
7 | influence ---

8 | A No, I don't.

9 | Q --- of crack cocaine?

10 | A I told you I've never been ---

11 | THE COURT: Hold it, hold it, hold it, don't answer
12 | until he completes asking his question.

13 | A No.

14 | THE COURT: Go ahead.

15 | A I don't exactly know where the house is, no.

16 | Q But you didn't - did you not know where you were because
17 | you were under the influence of crack cocaine?

18 | A No, I did not know where I was because it was dark and
19 | then besides that fact I've never been there before.

20 | Q Ms. Milton, when was the last time you smoked crack?

21 | MS. BAILEY: Objection, Your Honor. He's already
22 | asked about the last several days which is all that's
23 | relevant.

24 | THE COURT: Okay, I sustain the objection

25 | MR. FELTS: No further questions. Thank you, Your

1 Honor.

2 THE COURT: All right, redirect

3 MS. BAILEY: None, Your Honor.

4 THE COURT: All right, you may step down.

5 A Thank you.

6 THE COURT: Thank you.

7 All right, you can call your next witness.

8 MS. BAILEY: Thank you, Your Honor.

9 A I'm so out of here.

10 MS. BAILEY: Your Honor, the State, the State calls

11 Investigator Michael Thacker.

12 THE COURT: All right.

13 Whereupon, Michael Thacker was called to the stand, duly

14 sworn by the clerk and testified as follows:

15 THE CLERK: Thank you. Please be seated and state

16 your name for the record.

17 MR. THACKER: It's Michael Thacker.

18 DIRECT EXAMINATION

19 BY MS. BAILEY:

20 Q Investigator Thacker, could you tell the jury what you do

21 for a living?

22 A Criminal investigations, crime scene for Georgetown

23 County.

24 Q Okay, and what does your job entail?

25 A It's a 24-hour response to crime scenes, collection of

Michael Thacker - Direct by Ms. Bailey

90

1 evidence, some, some lab work at the office and evidence
2 collection, and also I maintain the evidence for the Sheriff's
3 Office.

4 Q And tell us about your schooling and training.

5 A Approximately 700 hours of crime scene training,
6 certified crime scene analyst through the International
7 Association of Investigations or certified crime scene analyst
8 but we'll just - it's an association certification.

9 Q Okay, and what type things did you learn in this, in this
10 training?

11 A Crime scene documentation, collection, evaluations.

12 Q Okay, and did you have reason in January of 2009 to
13 respond to Mosssdale Drive?

14 A January 24th, I believe.

15 Q Okay.

16 A I was requested to respond to that residence, [REDACTED]
17 Mosssdale.

18 Q And what did you find when you got there?

19 A Once I was there I was tasked with evaluating that scene
20 and the identification, documentation and collection of the
21 evidence.

22 Q Okay, and did you collect evidence there?

23 A Yes, ma'am.

24 Q All right, did you take pictures there?

25 A I did.

1 MS. BAILEY: For the record, the State is handing up
2 to Investigator Thacker State's Exhibit 1, 2, 10, 11, 12, 13,
3 14, 15, 16, 17, 18, 19, 20, 21.

4 BY MS. BAILEY:

5 Q Could you take a moment to flip through those pictures?

6 MR. FELTS: Can I see those just a minute?

7 MS. BAILEY: Sure. Thank you.

8 BY MS. BAILEY:

9 Q All right, and do you recognize those pictures?

10 A Yes, ma'am.

11 Q What are those pictures of?

12 A These are pictures of the scene that I photographed
13 at [REDACTED] Mossdale.

14 Q Are they a true and accurate representation of the
15 evidence that was collected on that day?

16 A Yes, ma'am.

17 Q Okay, and are they a true and accurate picture of the
18 crime scene as you found it?

19 A Yes.

20 MS. BAILEY: All right, at this time the State would
21 seek to move those pieces into evidence and publish them to
22 the jury.

23 THE COURT: All right, any objection?

24 MR. FELTS: No objection, Your Honor, at this time.

25 THE COURT: All right, State's Exhibits One, Two and

Michael Thacker - Direct by Ms. Bailey

92

1 10 through 21 are admitted into evidence without objection.

2 (Whereupon, State's Exhibit Numbers 1, 2 and 10 through
3 21 admitted into evidence and appropriately marked. See index
4 for description of exhibit.)

5 MS. BAILEY: Thank you, Your Honor.

6 MR. FELTS: May we approach?

7 THE COURT: All right.

8 (Whereupon, a bench conference is held in the presence
9 but out of the hearing of the jury.)

10 MS. BAILEY: Beg the Court's indulgence for just a
11 moment.

12 THE COURT: All right.

13 MS. BAILEY: For the record I'm showing the
14 investigator what's been previously marked as State's Exhibit
15 23, 24, 25 and 26.

16 BY MS. BAILEY:

17 Q And do you recognize what is in front of you, these
18 pieces of evidence?

19 A Yes.

20 Q And how do you recognize them?

21 A Each one has a canister that I've identified with a
22 number for record as well as my initials.

23 Q Okay, and where were these taken from?

24 A These were from the scene at [REDACTED] Mossdale inside.

25 Q And what county is that scene in?

1 A In Georgetown.

2 Q Okay, and how do you know that these were the items that
3 were taken from Mossdale Drive?

4 A These items were collected by myself.

5 Q Okay.

6 A And again, I initialed, I initialed each one of these
7 canisters when I sealed them.

8 Q Okay, and then after you collected them from the scene
9 have you had reason to disturb those canisters?

10 A Just once when I opened them to place in these packages
11 for trial.

12 Q Okay, and how do you know those are the same packages
13 that you prepared them for trial?

14 A Well, I'm the one that took the packages out and heat
15 sealed them in these packages. So, they never left my
16 custody.

17 Q Okay, and is the writing on the outside of those plastic
18 packages?

19 A And I initialed the packages as well, yes.

20 Q Okay, and did you mark the packages with any identifying
21 information in addition to your initials?

22 A They'll have the date and on these items again on the
23 canisters have the dates and times and then I have the dates
24 on there.

25 Q Okay.

Michael Thacker - Direct by Ms. Bailey

94

1 A And also the respective number that I used for the
2 identification from the scene.

3 Q Okay, and so, are those in the same condition as when you
4 last saw them?

5 A Yes.

6 Q All right, and are - that is the evidence that you
7 collected from Mossdale Drive?

8 A Yes, ma'am.

9 Q And is that evidence in the same condition as when you
10 collected it from Mossdale Drive?

11 A With the exception of me placing them in the heat-sealed
12 containers.

13 Q All right.

14 MS. BAILEY: At this time the State would like to move
15 those pieces of evidence in and publish them to the jury.

16 THE COURT: Any objection?

17 MR. FELTS: Yes, sir, Your Honor, yes, sir, I do have
18 an objection.

19 THE COURT: All right.

20 MR. FELTS: I think we need to approach at least at
21 this point.

22 THE COURT: All right.

23 (Whereupon, a bench conference was held in the presence
24 but out of the hearing of the jury.)

25 BY MS. BAILEY:

1 Q Could you identify for the jury what's contained in those
2 heat-sealed packages?

3 A One item is we have a bullet projectile, casing, a second
4 projectile and a casing.

5 Q Okay, so, how many projectiles?

6 A Two and two casings.

7 Q Okay.

8 MS. BAILEY: For the record I'm handing up what's been
9 identified as State's Exhibit Number Four.

10 BY MS. BAILEY:

11 Q Do you recognize that item?

12 A Yes.

13 Q Okay, and was that item located on the scene at Mossdale
14 Drive?

15 A Yes, it was.

16 Q Okay, and did you place that item into evidence?

17 A I did.

18 Q Okay, and have you kept it in evidence the entire time?

19 A It's been in evidence the entire time, yes.

20 Q Okay, and when did you take it out of evidence?

21 A I took it out for trial to bring it.

22 Q Okay, and how did you prepare that item for trial?

23 A It was originally in a box. I had it suspended in a box
24 and I removed that, made it safe, placed the gun lock on it
25 and placed it in this bag.

Michael Thacker - Direct by Ms. Bailey

96

1 Q Okay, and did you check to make sure that there was
2 nothing, nothing in it?

3 A Yes, yes, I made, made it safe, yes.

4 Q Okay, and is that item in the same condition as the last
5 time you secured it?

6 A Yes.

7 Q Okay, and how do you know that?

8 A Well, I have - I'm the one that collected it, placed it
9 in the box, sealed, entered it in evidence and I maintain it
10 in evidence.

11 Q Okay.

12 MS. BAILEY: At this time the State would like to move
13 State's Exhibit Number Four into evidence and publish it to
14 the jury, Your Honor.

15 THE COURT: Okay, any objection?

16 MR. FELTS: Yes, sir, Your Honor.

17 THE COURT: All right, same objection?

18 MR. FELTS: Yes, sir.

19 THE COURT: All right, all right, let's go ahead. I'm
20 going to need to take this up on the record. Ladies and
21 gentlemen, I'm going to excuse you back to the jury room for
22 just a minute. As I told you we do have a matter of law that
23 I need to take up with the attorneys before we proceed in the
24 trial. So, I'm going to excuse you back to the jury room for
25 just a minute. Please do not discuss the case even among

1 yourselves at this time. Thank you.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right, Mr. Felts.

5 MR. FELTS: Your Honor, as, as per our sidebar just a
6 few minutes ago, you know, our objection for the bullet, shell
7 casings, what have you was that they are fungible items, that
8 Ms. Bailey brought those items in here today in this bag over
9 here. The evidence custodian just got here. So, there should
10 have been a chain of custody established, there wasn't been,
11 and for all practical purposes, Ms. Bailey is in the chain of
12 custody. So, that evidence should be excluded for those
13 reasons.

14 THE COURT: All right, we're talking about State's
15 Exhibits 23, 24, 25 and 26. Ms. Bailey, let me hear from you
16 on that.

17 MS. BAILEY: Your Honor, it's - this evidence is not
18 fungible. There's no ballistics evidence. There's no DNA
19 evidence. There's no drugs. There's been no testing. The
20 State is not, is not entering any really forensic information,
21 just showing what was collected on scene, and therefore, the
22 evidence doesn't - we don't even need a clean chain on it as
23 long as our evidence custodian can say that he collected it,
24 he kept it safe and can identify it today as in the same
25 condition as he last saw it.

Michael Thacker - Direct by Ms. Bailey

98

1 THE COURT: Okay, yeah, I'm going to overrule your
2 objection. I rule that State's Exhibits 23, 24, 25 and 26 are
3 admitted into evidence over Defendant's objection. Since
4 there's no ballistics or anything like that I find they're
5 non-fungible. All right, now, State's Exhibit Number Four.

6 MR. FELTS: And just to be clear, that was just those
7 casings that - State's Exhibit Number Four is the firearm;
8 correct? I wasn't sure what the numbers were. I just wanted
9 to make sure.

10 THE COURT: All right, what are we talking about,
11 State's Exhibit Number Four.

12 MS. BAILEY: Number four is the gun.

13 A Yes.

14 THE COURT: All right.

15 MR. FELTS: Yeah, four. Okay, Judge, really the same
16 argument with the firearm simply because I don't know how it
17 got here, I don't know - he - the witness didn't have it. He
18 didn't bring it here with him. He - Erin got it and I don't -
19 I'm just not sure where it came from. I think there's some
20 authentication issues.

21 THE COURT: Well, I think his ---

22 MR. FELTS: I think that it's fungible.

23 THE COURT: I think his testimony was he found it at
24 the scene, that it's in the same condition that he - it was
25 when he found it at the scene and how he sealed it. Is it

1 fungible or is they're going to be any fingerprints or
2 ballistics or anything with regard to the ---

3 MS. BAILEY: No, Your Honor.

4 THE COURT: --- State's Exhibit Four.

5 MS. BAILEY: There's no testing that was done on the
6 gun, no, no ballistics, no fingerprints, no DNA, just
7 presenting the gun in the same condition it was found other
8 than that it's been locked and made safe for court.

9 THE COURT: All right, all right, I'm going to have
10 the same ruling. I'll admit State's Exhibit Number Four over
11 the objection of the Defendant. Like I said, he's basically
12 just testifying that he found it at the scene and this is the
13 gun that he found at the scene and that it's sealed but
14 there's no other testing or anything done with it. So, I find
15 that it's not a fungible piece of evidence.

16 MR. FELTS: Thank you, Your Honor.

17 THE COURT: All right.

18 MR. FELTS: Just for the record just so my argument is
19 clear so that - I understand where the Court's ruling is with
20 the fungible, that the good is not fungible.

21 THE COURT: Right.

22 MR. FELTS: But that he - that the witness cannot
23 testify, "Well, this was the weapon used in the armed robbery
24 or this was the gun, this was the bullets that were" ---

25 THE COURT: Well, I haven't heard that testimony yet.

Michael Thacker - Direct by Ms. Bailey

100

1 All I've heard is that he did a crime scene investigation and
2 this is what he found at the crime scene.

3 MR. FELTS: Yes, sir.

4 THE COURT: Yeah, I agree with that.

5 MS. BAILEY: Yes, Your Honor, for the record while the
6 jury's out, we're going to have Investigator Thacker also
7 authenticate a bandanna that was found on the scene and then I
8 have some evidence that he has been the custodian of but did
9 not collect; and so, I'm going to need him to testify as to
10 how he kept the evidence and how he prepared it for trial but
11 the person who collected it would testify later. I just don't
12 - should we do that outside the presence of the jury since Mr.
13 Felts keep objecting to the evidence?

14 THE COURT: I - well, let me, let me go ahead and hear
15 from you as to what did you say the bandanna and what else?

16 MS. BAILEY: As far as evidence that was actually
17 collected by, by Investigator Thacker we have the bandanna
18 that was collected on the scene.

19 THE COURT: And that'll be what's State's Exhibit?

20 MS. BAILEY: State's Exhibit Three marked for ID only.

21 THE COURT: Okay.

22 MS. BAILEY: Now, as far as evidence that was collected
23 by other investigators I have another bandanna, a T-shirt and
24 several ---

25 THE COURT: And give me, give me exhibits number so

1 I'll be able to keep up with it.

2 MS. BAILEY: Thank you, Your Honor, State's Exhibit
3 Eight is a second bandanna that was collected by Investigator
4 Hanna. State's Exhibit Nine is a T-shirt that was collected
5 by Investigator Hanna. State's Exhibit 61, I'm sorry, let me
6 back up, it was not 61, State's Exhibits 34, 33, 35, 36 and 32
7 were collected by Investigator Lynn Picard, but maintained in
8 evidence by Investigator Thacker, and State's Exhibit Seven,
9 beg the Court's indulgence, State's Exhibit Seven is some
10 jewelry. Again, it was not collected by Investigator Thacker
11 but it was maintained by him and prepared for trial by him.

12 THE COURT: All right, do you have any objection -
13 and I'm not going to rule that they're admissible or
14 inadmissible but rather than sending the jury back out if
15 you've got the same argument I didn't know if you wanted to.

16 MR. FELTS: It is, Judge, I mean, I - especially, and
17 - especially with regard to stuff that was not collected by
18 Investigator Thacker.

19 THE COURT: Okay, well, what we'll do - certainly it
20 seems like State's Exhibit Number Three is the same as Four
21 and the ones above that that he collected. So, unless you
22 have some additional argument, if they lay the proper
23 foundation that'll come in. On these others, without him
24 identifying what it is, he can identify, I'm assuming that
25 they were sealed or he can tell how he came into possession of

Michael Thacker - Direct by Ms. Bailey

102

1 it and what he did with it and then just reserve placing them
2 into evidence until the proper people that can get it are
3 here. So, it won't be presented to the jury, Eight, Nine, 34,
4 33, 35, 36, 32 and Number Seven. He can testify as to his
5 handling of those exhibits, where he got them, what he did
6 with them, but they won't be introduced into evidence or
7 presented to the jury unless and until they're authenticated
8 by whoever collected them.

9 MS. BAILEY: Okay, thank you, Your Honor.

10 THE COURT: All right.

11 MS. BAILEY: And so, should we do that with the jury
12 out or should we - should I - because the jury's going to see
13 them when I hand them up there to him, I mean. I'll try ---

14 THE COURT: Well, then, I mean, how were they
15 packaged? They're in a sealed package.

16 MS. BAILEY: Yes, Your Honor, they're all in sealed
17 packages.

18 THE COURT: Well, well, you can just hand the package,
19 and, "Can you identify State's Exhibit Eight as something you
20 received and how did you receive it and what did you do with
21 it," without getting into what it is.

22 MS. BAILEY: Yes, Your Honor.

23 THE COURT: And then when you get whoever collected
24 it they can authenticate as to what it is.

25 MS. BAILEY: Thank you, Your Honor.

1 THE COURT: We'll do it that way.

2 MR. FELTS: Judge, can we, can we proffer all of that
3 just in-camera? I mean ---

4 THE COURT: Well, yeah, if you all want to do it that
5 way, if she wants to go ahead and proffer it in-camera and ---

6 MR. FELTS: And that way it's clean and just do it and
7 then we can - I can object to the other witness or whatever
8 but there's other witnesses.

9 THE COURT: Okay, Ms. Bailey, are you willing to just
10 proffer it at this time and then I can ---

11 MS. BAILEY: Your Honor, I can do whatever the Court,
12 the Court likes I'm prepared to.

13 THE COURT: That'll be fine if you want to do it that
14 way.

15 MS. BAILEY: All right.

16 THE COURT: So, let's go ahead with this witness's
17 testimony outside the presence. It'll be proffered testimony
18 and I'll go ahead and make a ruling on the admissibility of
19 these exhibits at this time. Okay.

20 MS. BAILEY: Okay.

21 BY MS. BAILEY:

22 Q Do you recognize State's Exhibit Number Three?

23 A Yes.

24 Q And did you collect State's Exhibit Number Three at the
25 crime scene?

Michael Thacker - Direct by Ms. Bailey

104

1 A I did.

2 Q And is that - is State's Exhibit Number Three in
3 substantially the same condition as when you collected it at
4 the crime scene?

5 A Yes, with the exception of the packaging here.

6 Q Okay, and did you store State's Exhibit Number Three?

7 A I stored and maintained.

8 Q Okay, and have you disturbed it at all since you
9 collected it?

10 A With the exception of placing it in this bag for court.

11 Q Okay, and how do you know that that's the same piece of
12 evidence?

13 A This was, once again, taken out of the package by myself
14 and when I sealed this it's got the information for that
15 particular piece of evidence as well as the - my initials.

16 Q Okay.

17 MS. BAILEY: At this time the State would like to move
18 State's Exhibit Three into evidence.

19 THE COURT: All right, any challenges on that?

20 MR. FELTS: Judge, only the previously mentioned
21 challenge about it's a bandanna, you know, it has left the
22 investigator's custody today to come here. He did not bring
23 that here.

24 THE COURT: Okay.

25 MR. FELTS: And so, therefore, I mean, a bandanna is

1 a bandanna. I mean, they all - a lot of them look alike. So,
2 I would say that it was fungible and then therefore that ---

3 THE COURT: All right.

4 MR. FELTS: --- there needs to be a chain of custody
5 established.

6 THE COURT: No testing, forensic testing or anything?

7 MS. BAILEY: No, Your Honor, no forensic testing.

8 THE COURT: All right, all right, on that case you'll
9 still need - this is just proffered testimony but based upon
10 that argument I'd overrule your objection and would allow it
11 into evidence.

12 MR. FELTS: Yes, sir, Your Honor, I just ---

13 THE COURT: All right.

14 MR. FELTS: --- to further, I'd ask that the witness
15 be instructed not to and this is essentially in limine, not to
16 say, "Well, this came off of whoever or this came off of so
17 and so."

18 MS. BAILEY: Your Honor, he would have no way of
19 knowing that. I'm not going to proffer speculation.

20 THE COURT: Yeah, he wouldn't, yeah.

21 MS. BAILEY: Or request speculation from the witness.

22 THE COURT: Yeah, I'm not going to speculate as to
23 what his testimony is. If he gives any improper testimony you
24 can raise an objection then, but I haven't heard any
25 indication from him that he was going testify in that way.

Michael Thacker - Direct by Ms. Bailey

106

1 MR. FELTS: Yes, sir.

2 THE COURT: All right.

3 MS. BAILEY: All right, we've got some more - and for
4 the record State's Exhibit Three, which is a blue bandanna,
5 has that been moved into evidence at this point?

6 THE COURT: Well, this is just proffered testimony.
7 So, you're going to need to go through this again when we get
8 the jury in with regards to Number Three. Now, I've already
9 ruled 23, 24, 25, 26 and Four into evidence.

10 MS. BAILEY: Okay.

11 THE COURT: So, we're just dealing with Three, Eight,
12 Nine, 34, 33, 35, 36, 32 and Seven.

13 MS. BAILEY: Thank you, Your Honor.

14 THE COURT: All right.

15 MS. BAILEY: And at this point I don't expect the rest
16 of these to be moved into evidence but am just going to get
17 some testimony about its storage, collection, preparation for
18 trial.

19 THE COURT: You can go ahead and, go ahead and proffer
20 it to see if it's proper.

21 MS. BAILEY: Okay.

22 I'm presenting for the record State's 36, 34, 33, 35 and
23 32 to Investigator Thacker.

24 BY MS. BAILEY:

25 Q Do you recognize those?

- 1 A Yes.
- 2 Q And did you collect these?
- 3 A I did not.
- 4 Q Okay, did you see them at the crime scene?
- 5 A I did. I photographed them as well at the scene.
- 6 Q Okay, and where were they at the crime scene?
- 7 A These were all on the exterior.
- 8 Q Okay, and did you - how did you come into possession of
- 9 these?
- 10 A The person that collected these items packaged them and
- 11 entered them into evidence and I maintained the evidence.
- 12 Q Okay, and did you disturb - once you received them did
- 13 you disturb that evidence until today?
- 14 A Only to place them in packaging for court.
- 15 Q And are they in the same packaging that you placed them
- 16 in for court?
- 17 A Yes.
- 18 Q And how do you know that?
- 19 A Each one of these have, they're individually packaged and
- 20 they have the numbering system on them from the numbers that
- 21 were left by the person that collected the items.
- 22 Q Did you make any markings on the outside of the package?
- 23 A On these items I did not. These were put back into the
- 24 packaging because I wasn't sure if they were, you know, going
- 25 to be here, so.

Michael Thacker - Direct by Ms. Bailey

108

1 Q Uh-huh, but, but you know that these are the same ones
2 that you had in evidence. How do you know that is my
3 question. I'm sorry. How do you know that they're the same
4 ones that you had in evidence?

5 A Yes, when I took them out I put them in the individual
6 packaging, put them back in the packages, the original
7 package, sealed it up and that's what I, what I brought to -
8 for court and that was in the package signed by myself as
9 well.

10 Q I'm going to show you what has been previously marked as
11 State's Exhibit Nine and Eight. Do you recognize those items?

12 A Yes.

13 Q Are those items - how did you come into possession of
14 those?

15 A These were entered into evidence and I maintained them in
16 evidence.

17 Q Okay, and after they were entered into evidence did you -
18 what did you do with them from that point until today?

19 A The only time they were opened for these two items to be
20 removed from the packaging to be packaged separately for
21 court.

22 Q And how do you know they're the same items that you kept
23 in evidence?

24 A On the packaging I have the information for the
25 particular case as well as my initials.

1 Q Okay.

2 A On each package.

3 MS. BAILEY: And one last matter, for the Court, since
4 the jury's not here, for the Court's information the State is
5 handing up a package that has two pieces of jewelry in it
6 along with a picture of the jewelry, State's ---

7 THE COURT: And that's State's exhibits?

8 MS. BAILEY: State's - the picture of the jewelry is
9 State's Exhibit Number Seven.

10 THE COURT: Okay.

11 MS. BAILEY: The State is trying to avoid actually
12 putting the jewelry into evidence and would like to put the
13 picture into evidence but use the jewelry as a demonstrative.

14 THE COURT: Okay.

15 MS. BAILEY: Because the victims want their jewelry
16 back when it's all over and it not be in evidence forever; and
17 so, we're prepared to have Investigator Thacker testify that
18 he took a picture of the jewelry and that this jewelry is the
19 same that was collected.

20 THE COURT: All right.

21 MS. BAILEY: And how it's collected.

22 THE COURT: All right.

23 MR. FELTS: I don't have a problem with that as long
24 as it's authenticated, Judge, that's my understanding.

25 THE COURT: All right.

Michael Thacker - Direct by Ms. Bailey

110

1 MS. BAILEY: Okay, so, should we - we should probably
2 put an ID only on the actual jewelry.

3 THE COURT: Once it's marked ID then the court
4 reporter keeps it, so.

5 MS. BAILEY: That's true, okay, all right.

6 BY MS. BAILEY:

7 Q I'm handing up two pieces of jewelry. Did you come into
8 - did - how did those come into your possession?

9 A These, these two items were collected by another
10 individual, placed into evidence, I maintain the evidence.

11 Q Okay, and did you do anything with them from then until
12 today?

13 A I removed them from the original evidence package to
14 photograph them and then placed them in this, this heat-sealed
15 plastic container.

16 Q Did you take these photographs, this is State's Exhibit
17 Seven?

18 A Yes.

19 Q And are these photographs a true and accurate
20 representation of the jewelry that you just testified was in
21 evidence?

22 A Yes.

23 Q Okay, and, and you prepared this for trial today and how
24 do you know that it's the same jewelry that you were storing
25 in evidence?

1 A Yeah, well, once again, I placed them in the heat-sealed
2 package, put the information for the case as well as my
3 initials over the seal.

4 Q Okay, all right.

5 MS. BAILEY: Your Honor, that would be the extent of
6 Investigator Thacker's testimony as to that. There are some
7 more pictures that I'm going to have him authenticate but
8 that, that's consistent with the other pictures that he
9 authenticated. I don't anticipate a problem with that.

10 THE COURT: All right, any objections to that
11 testimony?

12 MR. FELTS: No, sir, Your Honor.

13 THE COURT: All right, proffered I'll rule that
14 testimony is admissible. All right, anything from the State
15 before we bring the jury back in?

16 MS. BAILEY: The State would just request a moment to
17 get the evidence back in order, Your Honor.

18 THE COURT: All right.

19 MS. BAILEY: And just to clarify State's Exhibit Four,
20 which is a gun, has been, has that been moved into evidence?

21 THE COURT: That's into evidence, yes, I've already
22 ruled. Now, what I'll still need to do is when I bring the
23 jury back in I will advise them that I have moved, I have
24 ruled that State's Exhibits 23, 24, 25, 26 and Four have been
25 admitted into evidence and then you can go ahead and proceed

Michael Thacker - Direct by Ms. Bailey

112

1 with the testimony regarding State's Exhibit Number Three.

2 MS. BAILEY: Okay.

3 THE COURT: All right, all right.

4 MS. BAILEY: And I believe when the jury went out you
5 still have the gun up there and we had not yet identified it.

6 THE COURT: Okay, that's Exhibit Number Four?

7 MS. BAILEY: Yes.

8 THE COURT: Okay.

9 MS. BAILEY: We had not identified it to the jury
10 yet.

11 THE COURT: All right, anything from the State before
12 we bring the jury back?

13 MS. BAILEY: No, Your Honor, other than, again, while
14 they're out, just trying to be efficient, I'm going to have
15 Mr. Thacker authenticate this. This is a drawing of the crime
16 scene. He was there on the scene; and so, he can explain to
17 the jury what this is, it's walls of the house and then I'm
18 going to ask that he, if he can, simply make a mark where he
19 collected each piece of evidence.

20 THE COURT: All right.

21 MS. BAILEY: I just want to make sure that it - see if
22 there's any objections on that just based on his testimony.

23 MR. FELTS: It's not to scale. Is that right? It's
24 not been ---

25 MS. BAILEY: That's correct. It is not to scale and

1 he'll testify that it's not to scale, to scale.

2 MR. FELTS: I mean, inasmuch as it's not to scale,
3 Judge, I would object that he be able to manipulate the
4 document or the exhibit and put stuff where he thinks he found
5 it. I think that's improper.

6 THE COURT: Okay, overruled. It's just being used
7 for demonstrative purposes. So, I'm going to allow it. All
8 right.

9 MS. BAILEY: Thank you, Your Honor. So, do I need to
10 mark this for identification?

11 THE COURT: For demonstrative purpose, yeah, I think
12 you still need to put it as an exhibit but it won't go back
13 with the jury when they deliberate. It's just used for
14 demonstrative purposes.

15 MS. BAILEY: Thank you, Your Honor.

16 MS. FELTS: Judge, do you have a list of what's what?
17 Are you all taking down what is exactly what?

18 THE COURT: I've - all I've got is State's Exhibits
19 1, 2, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24,
20 25, 26, I mean, I've got the exhibit numbers.

21 (Court reporter, Mr. Felts and Court confer.)

22 THE COURT: All right, all right, let's go ahead and
23 take a break before we bring the jury back in. This is gone
24 on a little bit longer than I was expecting. So, let's take
25 about a five-minute break. We'll come back, bring the jury

Juror 36 Excused

114

1 back in and get started right then. Okay.

2 MS. BAILEY: Thank you, Your Honor.

3 MR. FELTS: Thank you, Judge.

4 THE COURT: All right.

5 OFF THE RECORD

6 (On the record.)

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 MS. BAILEY: Your Honor, I have a matter I need to
10 bring to the Court's attention.

11 THE COURT: All right, hold for a minute. Let's get
12 the ---

13 MS. BAILEY: All right.

14 THE COURT: --- Defendant in here.

15 MS. BAILEY: Your Honor, it's been brought to my
16 attention that Mr. Canteen who is on the jury, I don't know
17 his jury number, he is Linda Canteen's brother and Linda
18 Canteen is employed by our office as our only victims'
19 advocate. You asked if anybody was related to anybody
20 employed by the Fifteenth Circuit Solicitor's Office and he
21 did not answer up, Number 36.

22 THE COURT: All right, when you say he's related to
23 her, how is he related to her?

24 MS. BAILEY: Her brother.

25 THE COURT: Yeah, that's related. All right.

Juror 36 Excused

115

1 MS. BAILEY: Ms. Canteen just told us. Linda Canteen
2 just told us.

3 MR. FELTS: I remember him being a Canteen but I
4 figured he would have said ---

5 MS. BAILEY: There's a bunch of them.

6 MR. FELTS: I was surprised when he said, "Well, no,
7 I'm not related to anybody at the Solicitor's Office."

8 THE COURT: All right, who is this, Juror Number?

9 CLERK: 36.

10 THE COURT: Juror number - James E. Canteen.

11 MS. BAILEY: Yes, Your Honor.

12 THE COURT: Okay, all right, I'm going to go ahead
13 and excuse him. We'll need to get - going to have to draw.
14 Let's see, our alternates are Eileen H. Snow and Vincent L.
15 Wilson. All right, since it's a criminal trial I think we
16 have to put both those names in a hat and just draw out of the
17 hat is the way we do those, unlike civil cases where you seat
18 a first and a second alternate. That's all right. I can do
19 it this way. I can do it this way. I've written Vincent L.
20 Wilson, Number 290 on one sheet of paper, Eileen H. Snow,
21 Number 247, on another sheet of paper, putting them in the
22 cup. I'm going to shake it up good. Who wants to pick?
23 Anybody want, you want me to let my law clerk pick?

24 MS. BAILEY: How about Mr. Colvin? I'll let Mr.
25 Colvin pick. He doesn't have a dog in this fight.

Juror 36 Excused

116

1 MR. HARMON: He's got a Co-Defendant. I might have to
2 object.

3 MR. FELTS: How about Mr. Little. Let's get Mr.
4 Little to stick his hand in there.

5 MS. BAILEY: Great.

6 THE COURT: Mr. Little, come around please, just
7 reach in and pull a name out. All right, Eileen H. Snow,
8 Juror Number 247 will now be made a part of the jury, be sat
9 on the jury. All right, let's bring Mr. Canteen out, Juror
10 Number 36.

11 (Whereupon, Juror Number 36, James Canteen enters
12 courtroom.)

13 THE COURT: Mr. Canteen?

14 MR. CANTEEN: Yes.

15 THE COURT: All right, if you'd come around. I
16 understand that your sister works for the Solicitor's
17 Department; is that correct?

18 MR. CANTEEN: Yes, that's correct.

19 THE COURT: Okay, because of that I'm going to have to
20 go ahead and excuse you from this jury and seat one of the
21 alternates because since you have a relative that works with
22 the Solicitor's Office that creates a bias, and now, have you
23 discussed that with anybody in the jury room?

24 MR. CANTEEN: No, I haven't.

25 THE COURT: All right, have you told anybody in the

1 jury room or discussed with any of the other jurors your
2 sister and her employment?

3 MR. CANTEEN: No, I haven't.

4 THE COURT: Okay, all right, any questions or anything
5 else the State wants to put on the record?

6 MS. BAILEY: Nothing from the State.

7 THE COURT: Anything from the Defense?

8 MR. FELTS: If I may have a moment, Judge.

9 THE COURT: All right.

10 MR. FELTS: Judge, I've got a couple of questions for
11 him and if he can be sworn, if I assume he's already sworn
12 somewhat, but if he can be placed under oath, Judge, just for
13 the record.

14 THE COURT: All right, sir.

15 (Whereupon, Juror Number 36 is sworn by Court.)

16 THE COURT: All right, all right, Mr. Felts.

17 MR. FELTS: Thank you, Your Honor.

18 THE COURT: You can just stand right there.

19 MR. CANTEEN: Okay.

20 MR. FELTS: Mr. Canteen, just for the record your
21 sister is Linda Canteen?

22 MR. CANTEEN: That's correct.

23 MR. FELTS: She's here today; correct?

24 MR. CANTEEN: Yes, I see her now. I didn't see her
25 earlier. Yes, I see my sister now. Yes, I didn't see her

Juror 36 Excused

118

1 earlier.

2 MR. FELTS: Okay, well, I mean, but she's in the
3 courtroom now; right?

4 MR. CANTEEN: Yes, I see her now.

5 MR. FELTS: Okay, fair enough. Have you discussed
6 this case at all with her?

7 MR. CANTEEN: No, no, I haven't.

8 MR. FELTS: All right, and have you discussed - the
9 Judge already asked you if you had discussed anything about
10 you being related to a member of the Solicitor's Office with
11 the jury.

12 MR. CANTEEN: No, I have not.

13 MR. FELTS: You hadn't discussed any of that with the
14 jury?

15 MR. CANTEEN: No, I haven't.

16 MR. FELTS: Okay, as far as just, you know, this case
17 happened back in 2009. You hadn't heard anything about it
18 from Ms. Canteen since then?

19 MR. CANTEEN: No.

20 MR. FELTS: Till today?

21 MR. CANTEEN: Till today when I came here but I've
22 heard nothing about it.

23 MR. FELTS: And none of that's been discussed back
24 there in the jury room?

25 MR. CANTEEN: No.

1 MR. FELTS: Okay, thank you, Your Honor.

2 THE COURT: All right, sir, thank you for being with
3 us. You're free to stay with us or you're free to go. Now,
4 you will - you should've been given a number. You'll need to
5 call that number after six p.m. today for further directions,
6 okay?

7 MR. CANTEEN: Oh, okay.

8 THE COURT: Have you got anything in the jury room?
9 Did you leave anything in the jury room?

10 MR. CANTEEN: No, no.

11 THE COURT: Okay, all right, well, you're free to go.
12 You can go ahead and step out that way but please call that
13 number after six p.m. today; all right?

14 MR. CANTEEN: Okay.

15 THE COURT: All right, thank you very much.

16 MR. CANTEEN: All right.

17 (Juror Number 36, James E. Canteen, exits courtroom.)

18 THE COURT: All right, anything from the State before
19 we bring the jury back in.

20 MS. BAILEY: No, Your Honor.

21 THE COURT: Anything from the Defense?

22 MR. FELTS: No, sir, Your Honor.

23 THE COURT: All right, let's go ahead and bring the
24 jury in.

25 (Whereupon, the following takes place in the presence of

Michael Thacker - Direct by Ms. Bailey

120

1 the jury.)

2 THE COURT: All right, ladies and gentlemen, welcome
3 back. While you were out several things happened and I'll
4 explain that to you now. Number one, the reason we have
5 alternates is from time to time things come up through no
6 fault or nothing improper. Sometimes jurors get sick.
7 Sometimes things come out and we have to excuse jurors. Well,
8 we've had to excuse Mr. Canteen, James E. Canteen as a juror
9 on this particular case, not through anything improper or
10 anything of that nature, but as a result Ms. Eileen H. Snow,
11 you have now been made a part of the jury and that's why you
12 serve as alternate. So, you will sit with the remainder of
13 the jury. Mr. Wilson, you'll still maintain the seat where
14 you are at this point in time.

15 Also, in your absence I went ahead and ruled that State's
16 Exhibits Number 23, 24, 25, 26 and State's Exhibit Number Four
17 are admitted into evidence.

18 (Whereupon, State's Exhibit Numbers Four, 23, 24, 25, and
19 26 admitted into evidence and appropriately marked. See index
20 for description of exhibit.)

21 THE COURT: All right, Mr. Bailey.

22 MS. BAILEY: Thank you, Your Honor.

23 BY MS. BAILEY:

24 Q Investigator Thacker, you have before you State's Exhibit
25 Number Four which has been moved into evidence. Could you

1 tell what the jury - tell the jury what that is?

2 A It's a Hi-Point 380 caliber handgun.

3 Q Okay.

4 MS. BAILEY: Okay, permission to publish to the jury.

5 THE COURT: All right.

6 BY MS. BAILEY:

7 Q And this is what you say you collected from the scene at

8 Mossdale Drive?

9 A Yes.

10 Q And in what way has it been changed since you collected

11 it from Mossdale Drive?

12 A It's been removed from the box and a lock has been placed

13 through the gun barrel.

14 Q Okay. Handing up what has been previously marked as

15 State's Exhibit Three. Do you recognize this?

16 A Yes.

17 Q And did you collect this piece of evidence?

18 A I did.

19 Q Where did you collect it?

20 A From [REDACTED] Mossdale Drive, Georgetown.

21 Q And then did you keep that piece of evidence?

22 A I did, maintained in evidence.

23 Q Okay, and did you disturb it at all between then and now?

24 A Just to place it in the heat-sealed package for court.

25 Q And how do you know it's the same piece of evidence that

Michael Thacker - Direct by Ms. Bailey

122

1 you collected?

2 A It has the information for the particular case as well as
3 my initials.

4 Q And did you put those on there?

5 A Yes.

6 Q And is that your handwriting?

7 A That's correct.

8 Q So, is that package in the same condition as when you
9 last saw it?

10 A Yes.

11 Q Okay.

12 MS. BAILEY: At this time the State would like to move
13 State's Exhibit Number Three into evidence and have permission
14 to publish it to the jury.

15 THE COURT: All right, any objection other than what's
16 been placed on the record?

17 MR. FELTS: No, sir, Your Honor, thank you.

18 THE COURT: All right, all right, State's Exhibit
19 Number Three is admitted into evidence over Defendant's
20 objection. You may publish it.

21 (Whereupon, State's Exhibit Number Three admitted into
22 evidence and appropriately marked. See index for description
23 of exhibit.)

24 BY MS. BAILEY:

25 Q I'm going to let you take a look at these pictures. Let

1 me know when you've flipped through all of them.

2 A Okay.

3 Q Thank you.

4 MS. BAILEY: For the record these are State's Exhibits
5 22, 27, 28, 29, 30 and 31.

6 BY MS. BAILEY:

7 Q And do you recognize these pictures?

8 A Yes.

9 Q Did you take these pictures?

10 A Yes.

11 Q And are these pictures a fair and accurate representation
12 of what you found at Mossdale Drive?

13 A Yes, ma'am.

14 Q Okay.

15 MS. BAILEY: The State would move to enter into
16 evidence State's Exhibits 22, 27, 28, 29, 30 and 31 and would
17 like permission to publish them to the jury.

18 THE COURT: Any objection?

19 MR. FELTS: No, sir, Your Honor, other than my
20 previous.

21 THE COURT: All right, there hadn't been any previous
22 addressed on this one.

23 MR. FELTS: Yes, sir, Your Honor, that's right. So,
24 no objection.

25 THE COURT: All right, State's Exhibits 22, 27, 28,

Michael Thacker - Direct by Ms. Bailey

124

1 29, 30 and 31 are admitted into evidence without objection.

2 MS. BAILEY: Thank you, Your Honor.

3 THE COURT: All right.

4 (Whereupon, State's Exhibit Numbers 22, 27, 28, 29, 30
5 and 31 admitted into evidence and appropriately marked. See
6 index for description of exhibit.)

7 BY MS. BAILEY:

8 Q The State is handing up State's Exhibit Number Eight,
9 Nine, 32, 35, 34, 33 and 36. Do you recognize that evidence?

10 A Yes.

11 Q And did you collect that evidence?

12 A I did not.

13 Q Okay, how did you come into possession of that evidence?

14 A This evidence was turned in by another officer. I
15 maintained it in evidence.

16 Q Okay, and when you maintained it in evidence did you
17 disturb it at all between then and today?

18 A Only to place it in heat-sealed package for court.

19 Q Okay, and how do you know those are the same heat-sealed
20 packages that you prepared for court?

21 A These particular ones have my signature, oh, excuse me,
22 my initials on the heat-sealed line as well as the information
23 for the particular case.

24 Q Okay, and so, this is - you're sure that this evidence
25 in front of you is the same evidence that was placed into

1 evidence at the Sheriff's Department for your safekeeping?

2 A Yes.

3 Q Okay.

4 MS. BAILEY: For the record I'm showing the witness
5 State's Exhibit Number Seven, along with two pieces of
6 jewelry.

7 BY MS. BAILEY:

8 Q Do you recognize what's before you?

9 A Yes.

10 Q Okay, and as far as the two pieces of jewelry how did
11 you come into possession of those?

12 A These items were turned in by and collected by another
13 officer and I maintained them in evidence.

14 Q And are those the same pieces that you maintained in
15 evidence that you're bringing here to court or that you are
16 presenting here today?

17 A Yes.

18 Q And how do you know that it's the same evidence.

19 A These were packaged and heat sealed by myself and have
20 my initials on the heat-seal line.

21 Q And did you have any reason to disturb that evidence
22 from the time that you took it in in the evidence room until
23 today?

24 A Just to place it in this packaging for court as well as
25 to photograph it.

Michael Thacker - Direct by Ms. Bailey

126

1 Q Okay, and are those photographs a true and accurate
2 representation of those two pieces of jewelry?

3 A Yes.

4 Q All right, Investigator Thacker, at this time I'm going
5 to show you what's been pre-marked as State's Exhibit 37. Do
6 you recognize this?

7 A Yes, it looks to be a not-to-scale rendition of the
8 sketch of [REDACTED] Mosssdale Lane.

9 Q Okay, so, you were at the scene at Mosssdale Lane, [REDACTED]
10 Mosssdale Lane?

11 A Yes.

12 Q And even though it's not to scale this is roughly, this
13 is what you remember the house being like?

14 A Yes, for the, the interior area, yes.

15 Q Okay, and is this a drawing?

16 A Yes, ma'am.

17 Q Okay, and, and would this piece of evidence assist you
18 in your testimony today?

19 A Yes.

20 Q Okay.

21 MS. BAILEY: At this time the State would like to
22 present State's Exhibit 37 for demonstrative purposes.

23 THE COURT: All right, what is, what is the exhibit
24 number?

25 MS. BAILEY: 37.

1 THE COURT: All right, State's Exhibit 37 admitted
2 into evidence for purposes of demonstrative presentation to
3 the jury over the Defendant's objection.

4 MR. FELTS: Thank you, Your Honor.

5 MS. BAILEY: Thank you, Your Honor.

6 THE COURT: All right.

7 (Whereupon, State's Exhibit 37 admitted into evidence for
8 purposes of demonstrative presentation to the jury. See index
9 for description of exhibit.)

10 BY MS. BAILEY:

11 Q Investigator Thacker, this evidence that you have
12 authenticated as what you collected, could you ---

13 MS. BAILEY: Your Honor, can I have permission for Mr.
14 - Investigator Thacker to come down and assist the jury with
15 this?

16 THE COURT: Yes, that's fine. He needs to be near a
17 microphone, though ---

18 MS. BAILEY: Okay.

19 THE COURT: --- so that the court reporter can take up
20 his testimony.

21 MS. BAILEY: All right.

22 THE COURT: As a matter of a fact in past it's been
23 better if he gets on the other side and kind of faces ---

24 MS. BAILEY: This side.

25 THE COURT: --- the court reporter ---

Michael Thacker - Direct by Ms. Bailey

128

1 MS. BAILEY: Okay.

2 THE COURT: --- that way. That's correct. You may
3 step down.

4 MS. BAILEY: All right, and Your Honor, may I get the
5 assistance of Assistant Solicitor David Richardson in holding
6 this up?

7 THE COURT: All right, that'll be fine. No, what I'm
8 talking about is having - have the witness on the other side
9 of the board facing the court reporter. There you go. That's
10 it.

11 MS. BAILEY: There we go, all right.

12 THE COURT: All right, now, please, kind of come
13 around so all the jurors can see it. There you go.

14 MS. BAILEY: Beg the Court's indulgence for just a
15 moment.

16 BY MS. BAILEY:

17 Q All right, I am showing the jury State's Exhibit Three.
18 Could you describe for the jury what this exhibit is?

19 A It's a bandanna.

20 Q And I'm also via the monitors showing the jury State's
21 Exhibit Five, which is this, and could you tell the jury what
22 they're looking at?

23 A This is a photograph of the item that you're holding
24 marked number 18 for my purposes.

25 Q Okay, and ---

1 THE COURT: Wait a minute. Let me see the attorneys
2 up here for a minute.

3 (Whereupon, a bench conference is held in the presence
4 but out of the hearing of the jury.)

5 MS. BAILEY: I apologize, Your Honor.

6 THE COURT: All right, all right, so, those are in
7 evidence. Go ahead.

8 BY MS. BAILEY:

9 Q Okay, so, State's 10, which is - could you describe what
10 that is?

11 A That's photograph of a blue bandanna marked number 18
12 for my, my numbered system.

13 Q Okay, and is this the blue bandanna that you took the
14 picture of in that picture?

15 A Yes.

16 Q Okay, and could you tell the jury where, where you
17 located that blue bandanna?

18 A How would you like me to mark it?

19 Q If you could point it out and then mark it on, on the
20 chart here.

21 A Okay, it would've, it would've been right in this area
22 here.

23 Q Okay, and do you want to ---

24 MS. BAILEY: Your Honor, if it's all right could he
25 write that it - he found the blue bandanna there?

Michael Thacker - Direct by Ms. Bailey

130

1 THE COURT: That'll be fine, yeah.

2 MS. BAILEY: Okay.

3 BY MS. BAILEY:

4 Q Go ahead and write there and could you write on there
5 State's Exhibit Three as well.

6 MS. BAILEY: Thank you, Your Honor.

7 BY MS. BAILEY:

8 Q I mean, thank you, Investigator Thacker, and I'm also
9 showing you State's Exhibit 11 which should be coming up on
10 the jury's monitor and could you describe what they're looking
11 at now?

12 A Okay, it's a photograph of the blue bandanna that I just
13 marked. It's just an overhead 90 degree photograph of that
14 item.

15 Q All right, thank you.

16 MS. BAILEY: For the record, I have State's Exhibits
17 Number Four and 12 in my hand.

18 BY MS. BAILEY:

19 Q Could you describe for the jury what we're looking at in
20 State's Exhibit Number 12?

21 A This is a photograph of a handgun inside of the toilet
22 tank that was in the bathroom.

23 Q Okay, and that's where it was collected into evidence?

24 A Yes.

25 Q And this - what's, what is State's Exhibit Four?

1 A This is the 380 caliber Hi-Point.

2 Q Okay, and could you show the jury on, on this drawing

3 where it was that you collected this evidence?

4 A Yes, it was in this toilet tank in the bathroom.

5 Q Okay, if you could mark on there what it was that you

6 found there.

7 A (Complies with request.)

8 Q I'm presenting to you State's Exhibit 24 and 13 and

9 could you tell the jury what, what it is that they're looking

10 at in the photograph?

11 A This is marked number 41 from my number, numbering

12 system. It's a projectile. It's in a pan in the hallway floor.

13 Q Is that what some people might call a bullet slug? Is

14 that the same thing?

15 A For a, for a bullet, yes, ma'am.

16 Q Okay, and you collected that from the scene?

17 A Yes.

18 Q And could you show the jury where it was that you

19 collected that?

20 A It's right in this area here.

21 Q Okay, could you write on there?

22 A Would you like me to write the photograph number exhibit

23 or ---

24 Q The State ---

25 A --- the exhibit number.

Michael Thacker - Direct by Ms. Bailey

132

1 Q The, the exhibit number of the photograph would be
2 great. All right, I'm showing you State's Exhibit 16 and 26.
3 Could you describe for the jury what it is that I'm handing
4 you?

5 A Okay, this is a bullet, fired bullet with my number 36
6 for my information purposes of the sketch.

7 Q And where in the house did you collect that evidence?

8 A That was in - it was right outside of this sketch where
9 the laundry, hallway goes. It was about this area right here.

10 Q Okay, and could you write the exhibit number on there
11 and what it is that they're looking at there?

12 A (Complies with request.)

13 Q I'm showing you State's Exhibit 15 and could you
14 describe what it is that the jury's looking at?

15 A This is a fired bullet.

16 Q Okay, and is it the same as what's already been put on
17 here somewhere?

18 A Yes, it's the same as the Exhibit 16 from the
19 photograph.

20 Q Okay, is it just a more close-up picture or ---

21 A Just a 90 degree overhead photograph for a close-up
22 that's what we call it.

23 Q All right, okay, thank you. I'm showing you State's
24 Exhibit 23 and 17 and could you tell the jury what they are
25 looking at?

1 A State's Exhibit 17 that's a photograph of my item number
2 seven which is a shell casing, 380 shell casing.

3 Q And could, and could you tell us where we located -
4 where you located that on the demonstrative?

5 A Right in this area here.

6 Q I'm showing you what has previously been marked as
7 State's Exhibits 25 and 18, and could you describe for the
8 jury what they're looking at?

9 A This is a photograph of my item number 31. It's a 25-
10 caliber shell casing that was located outside of the bedroom
11 number three, that I identified as bedroom number three.

12 Q Okay, and could you show us where on here it was found?

13 A (Complies with request.)

14 Q All right, and I'm showing you State's Exhibit 19. Just
15 tell the jury what they're looking at.

16 A This is a close-up of the casing.

17 Q And is it the same one that you just marked?

18 A Yes.

19 Q Okay, I'm showing you State's Exhibit 20, which should
20 be coming up on the jurors' monitors. Can you tell us what
21 we're looking at?

22 A This is a photograph of a hole that's in the wall
23 leading into the - what I had referred to as the laundry
24 hallway.

25 Q Okay, and could you show us on the map where, where or

Michael Thacker - Direct by Ms. Bailey

134

1 on the drawing where that was located?

2 A In this area here.

3 Q I'm showing you State's Exhibit 21. It should be coming
4 up on the jurors' screens. Can you describe what it is that
5 they're looking at?

6 A This is damage to the wall that was from the bullet that
7 struck the wall.

8 Q And where was that located?

9 A It was on this side of the wall leaving the same room,
10 laundry.

11 Q Okay, and State's Exhibit 22?

12 A Twenty-two is the same photograph of the - well, it's a
13 photograph of the same damage just a close-up, 90 degree.

14 Q Okay, and so, point out again where that was located?

15 A This area.

16 Q Okay, all right, you can have a seat back in the witness
17 box.

18 A (Complies with request.)

19 Q Now I'm showing you State's Exhibit Number 30. Could
20 you tell the jury what it is that they're looking at?

21 A A photograph of a shell casing.

22 Q Okay, and where was that, where did you take that
23 picture?

24 A That was taken exterior, outside in the yard.

25 Q And State's Exhibit 29? What is it that they're looking

1 at now?

2 A This is a photograph of a shell casing.

3 Q Was that taken outside?

4 A Yes.

5 Q Was that an additional shell casing to the one they just
6 saw?

7 A Yes, it's a separate than the, than the previous
8 photograph. It's identified with a different crime scene
9 number.

10 Q All right, I'm showing you State's Exhibit 28. Could
11 you describe what's in that photograph?

12 A A photograph of a shell casing.

13 Q Is that a separate shell casing from the other two that
14 were - that we just looked at?

15 A Yes.

16 Q And where was that one located?

17 A Outside of the residence.

18 Q Showing you State's Exhibit 27. Could you describe
19 what we're looking at there?

20 A This is a photograph of a shell casing as it was found.
21 It's a little hard to see in this one. It's kind of turned
22 up, up-ways, which if you look hard enough you can see it but
23 it's a shell casing outside separate than the others.

24 Q Okay, and you were there on scene; and so, you saw - did
25 you see it with your own eyes?

Michael Thacker - Direct by Ms. Bailey

136

1 A I did and I think just maybe because this photograph
2 was a little bit not as identifiable as the others and the
3 rain was kind of hampering some of this on that day.

4 Q Okay, and I'm showing you State's Exhibit 31 and could
5 you describe what that is?

6 A It's a photograph of shell casing found outside as
7 well.

8 Q And where, where was that found?

9 A Outside, the exterior residence.

10 Q Okay, I'm showing you State's Exhibit Two and what is
11 that a picture of?

12 A This is a photograph of the residence, [REDACTED] Mossdale
13 Lane, Georgetown.

14 Q Okay, and I'm showing you State's Exhibit One and what
15 is that a picture of?

16 A This is a photograph of the same residence taken at a
17 separate angle.

18 Q Okay, all right, now, you collected a lot of evidence
19 that day. Did the Sheriff's Department do any ballistics or
20 DNA or fingerprint analysis on anything that was collected?

21 A No, not to my knowledge.

22 Q Do you know why that was?

23 A The only thing that as far as that, you know, when I,
24 when I go there to process the scenes I process the evidence,
25 evaluate the scene. There's a - usually someone is assigned

1 the case. In this, in this instance I could tell you most
2 likely my experience would be there were individuals that were
3 located in and around the scene as well as other locations,
4 most probably identifications, and you know, some of that,
5 based with that and the pending evidence that was located
6 within, within the house may have led to not having anything
7 analyzed from that point.

8 Q Okay, so, in your opinion was fingerprint ---

9 MR. FELTS: Objection, Your Honor, improper at this -
10 there hasn't been a foundation for this question.

11 THE COURT: All right, I'll sustain it at this time.

12 MS. BAILEY: Thank you, Your Honor.

13 BY MS. BAILEY:

14 Q Based on your experience in law enforcement which you
15 testified to previously, if you had been - well, you did
16 investigate this case. While investigating this case did you
17 see it necessary to run any fingerprint analysis on any of the
18 evidence?

19 MR. FELTS: Objection, Your Honor, same, there's no
20 foundation for that question.

21 THE COURT: No, I'm going to overrule it. I'm going
22 to allow it. Go ahead.

23 A In this particular case no, no, ma'am.

24 Q Okay, and, and why was that?

25 A The individuals that were - that were all located they

Michael Thacker - Direct by Ms. Bailey

138

1 were inside the residence as well as another location with,
2 within the same, you know, relating to the same case and with
3 the witness, witnesses that were able to identify.

4 Q And how about DNA evidence, was that necessary?

5 A I don't, I don't, I wouldn't believe so, not at that
6 time.

7 Q Okay.

8 MS. BAILEY: I beg the Court's indulgence.

9 THE COURT: All right.

10 BY MS. BAILEY:

11 Q By the time you were on scene were there already some
12 suspects identified in the case?

13 A Yes.

14 Q Okay, so, by the time you got on scene it was not a
15 whodunit; is that correct?

16 A That's right, yes, ma'am.

17 Q All right.

18 MS. BAILEY: No further questions.

19 THE COURT: All right, cross examination.

20 MR. FELTS: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. FELTS:

23 Q Investigator Thacker, you, you just testified to a bunch
24 of evidence, we've seen a bunch of evidence. One thing you
25 said concerned me, that was you testified a little bit earlier

1 this, this stuff that we've seen here had been in your custody
2 continuously; correct?

3 A That's correct.

4 Q When, in fact, you did not bring that, this - these
5 items to court today; did you?

6 A That's correct.

7 Q Who brought those items to court?

8 A The solicitor.

9 Q Okay.

10 MS. BAILEY: Your Honor, he would actually not have a
11 way to know that. He can testify as to where he last left
12 them but he just ---

13 THE COURT: I mean, do you have an objection?

14 MS. BAILEY: Just that, just as to speculation.

15 THE COURT: All right, sustained.

16 Q You didn't bring them to court; did you?

17 A I did not.

18 Q And you're the evidence custodian; correct?

19 A Yes.

20 Q And you testified that you are trained and certified
21 pursuant to some sort of certification association I guess;
22 correct?

23 A Yes.

24 Q Now, letting pieces of evidence for crimes out of your
25 custody and control and care is not part of the regulations

Michael Thacker - Cross by Mr. Felts

140

1 and the whatever that you are certified under; is it?

2 A For, for purposes of bringing them to court, not, not
3 from the maintaining the evidence. It stays in my custody
4 till which point that it was, it was brought here for court.

5 Q Right, but you didn't know what happened to it after it
6 left though; did you?

7 A It was, it was signed off on and that I came to court.

8 Q Now, you've never been out to this particular location;
9 have you, this [REDACTED] Mossdale Lane?

10 A Yes, I was there.

11 Q And that's a fair question, a fair response. The better
12 question was before the incident date, January 23rd or the
13 24th, whenever it was that you got out there to this location,
14 this Mossdale Lane, before then you'd never been out there;
15 have you?

16 A I have not.

17 Q You'd never walked around the premises looking at leaves
18 or anything like that; have you?

19 A Prior to?

20 Q Prior to January 23rd or the 24th, yes, sir.

21 A No, I have not.

22 Q And this, this particular residence to your knowledge is
23 a remote location; correct?

24 A I would, I would say it's fairly remote from the main
25 roadway.

1 Q It's out in the country; right?

2 A It is.

3 Q And you'd never been inside the residence other than the
4 day of the incident or the day that you responded to that
5 location?

6 A No, I haven't.

7 Q So, you got no idea what it looks like on the inside
8 until that day you go in there?

9 A That's right.

10 Q Got no idea what's there, no idea what's on the floor,
11 no idea if there's any damage on the walls or anything like
12 that?

13 A That's correct.

14 Q As a matter of a fact, these bullet, shells, all that
15 stuff that the State's showed you and you've been talking
16 about, this gun, the bandanna, everything, you don't know if
17 that was there before you got there or not; do you?

18 A As far as the casings I could not. The gun I could say
19 it's - it hadn't been in the water for any long period of
20 time.

21 Q Aside from that point you don't know if it's been - you
22 don't if it was there or not because you ain't been there;
23 have you, aside from the day of the incident.

24 A Prior to that day, no.

25 Q Now, Investigator Thacker, you didn't - you just ---

Michael Thacker - Cross by Mr. Felts

142

1 (Music begins to play in courtroom.)

2 THE COURT: Hold for a second, hold for a second.

3 Can we - we need to stop that music or whatever it is. Can we
4 send - have we got somebody that can go in there and have them
5 turn it off? Okay, go ahead.

6 MR. FELTS: Thank you, Judge.

7 BY MR. FELTS:

8 Q Investigator Thacker, you testified that the water or
9 that the gun that was there hadn't been in the water long;
10 correct?

11 A Right, yeah, I said it couldn't have been there for any
12 long extended period of time.

13 Q But you also testified that you didn't test the firearm
14 or anything for DNA or fingerprints or anything like that
15 though; didn't you? Didn't you say that?

16 A Not - I did not, no.

17 Q Right, as a matter of a fact none were - none of that
18 was done; right?

19 A That's right.

20 MR. FELTS: Could I have just a moment, Your Honor?

21 THE COURT: All right.

22 MR. FELTS: That's all I have for this witness.

23 Thank you.

24 THE COURT: All right, redirect.

25 REDIRECT EXAMINATION

1 BY MS. BAILEY:

2 Q The point of collecting evidence is in case you have to
3 go to court; is that right?

4 A Yes.

5 Q And when did you bring the evidence to the courthouse?

6 A It was this morning.

7 Q And who did you sign the evidence over to?

8 A I signed it over to Mr. Steve Brown.

9 Q And what time was that this morning?

10 A Approximately eight, I think we met at eight o'clock..

11 Q And for the record what time is it now?

12 A It's - appears to be 12:46.

13 Q And, and that evidence looks just like it was when you
14 left it; is that right?

15 A That's correct.

16 Q No further questions.

17 THE COURT: All right, you may step down.

18 A Thank you, Your Honor.

19 MR. FELTS: Your Honor, may I recross briefly?

20 THE COURT: I don't think she brought out any new
21 information. I'll allow a few questions just as to anything
22 new that she brought out on redirect that she did not - that
23 you did not address in your cross.

24 RECCROSS EXAMINATION

25 BY MR. FELTS:

Michael Thacker - Recross by Mr. Felts

144

1 Q You just testified that you dropped this - these items
2 off here at the solicitor's office this morning at eight;
3 correct?

4 A That's correct.

5 Q You hadn't seen them again until now; right?

6 A That's correct.

7 Q So, you don't have any idea what has happened between now
8 and then?

9 A Other than the seals are still sealed as they were when I
10 left them.

11 Q No further questions. Thank you.

12 THE COURT: All right, you may step down.

13 A Thank you, Your Honor.

14 THE COURT: All right, let me see the attorneys for
15 one brief second.

16 (Whereupon, a bench conference was held in the presence
17 but out of the hearing of the jury.)

18 THE COURT: All right, you can call your next
19 witness.

20 MS. BAILEY: Thank you, Your Honor. The State calls
21 Investigator Dustin Morris, and just to put on the record
22 we're releasing Investigator Thacker from his subpoena.

23 THE COURT: Any objection?

24 MR. FELTS: No, sir, Your Honor.

25 THE COURT: All right, Mr. Thacker is free to go.

1 A Thank you, Your Honor.

2 Whereupon, Dustin Morris was called to the stand, duly
3 sworn by the clerk and testified as follows:

4 THE CLERK: Thank you. Please be seated and state
5 your name for the record.

6 MR. MORRIS: Dustin Morris.

7 DIRECT EXAMINATION

8 BY MS. BAILEY:

9 Q Could you tell us what you do for a living?

10 A I'm an investigator employed by the Georgetown County
11 Sheriff's Office.

12 Q And did you have a reason to go to Mossdale Lane on
13 January 24th of 2009?

14 A Yes, ma'am, I did.

15 Q And what was your role when you got there?

16 A Assisted in processing the crime scene with other
17 investigators who were present on scene.

18 Q Okay, and did you find anything in a toilet bowl?

19 A Yes, ma'am, I did.

20 Q I'm going to show you what's been previously marked as
21 State's Exhibit 12 and ask that it be put up for the jury to
22 look at and how did you discover that at the scene?

23 A Basically, our job was to search for evidence at the
24 residence and based on the fact that we were searching for
25 specific items I lifted the toilet bowl lid off of the tank

Dustin Morris - Cross by Mr. Felts

146

1 and located the gun inside the back of the tank.

2 Q Okay, and is that picture a fair representation of
3 exactly how you found it when you lifted that, the top to the
4 tank?

5 A Yes, ma'am.

6 Q And to the best of your knowledge is Mossdale, this
7 house on Mossdale Lane is it in Georgetown County?

8 A Yes, ma'am.

9 MS. BAILEY: No further questions for Investigator
10 Morris.

11 THE COURT: All right, cross examination.

12 CROSS EXAMINATION

13 BY MR. FELTS:

14 Q Investigator Morris, aside from the day you responded to
15 the scene you've never been to that particular residence; have
16 you?

17 A No, sir.

18 Q And you've never been inside, walked around outside or
19 done anything like that ---

20 A No.

21 Q --- before that day?

22 A Not prior to that day, no, sir.

23 Q So, you don't know if that gun was there or not; do you?

24 A Prior to me being there?

25 Q Yes.

1 A No, I do not.

2 Q No further questions, thank you.

3 THE COURT: Redirect?

4 MS. BAILEY: None, Your Honor.

5 THE COURT: All right, you may step down. Thank you.

6 All right, ladies and gentlemen, it's about 10 till one.

7 I think we're going to go ahead and break for lunch. We've
8 ordered lunch for you. So, they'll serve it back there for
9 you. Give you an opportunity to stretch your legs, use the
10 restroom, eat some lunch, whatever the case may be. I hope
11 you have a good lunch. I caution you, do not discuss the case
12 even among yourselves at this point in time. It's still too
13 early for deliberations and I'll let you know when you can
14 begin your deliberations but we'll take a break now so you can
15 eat lunch and we'll see you back in just a few minutes.

16 Everybody else please remain seated while the jury is excused.

17 (Whereupon, the following takes place outside the
18 presence of the jury.)

19 THE COURT: All right, anything from the State before
20 we recess for lunch?

21 MS. BAILEY: The State would just request that we
22 release Investigator Morris from the subpoena.

23 THE COURT: Any objection?

24 MR. FELTS: I don't have any objection to that, Your
25 Honor.

Dustin Morris - Cross by Mr. Felts

148

1 THE COURT: All right, he's free to go.

2 A Thank you.

3 MS. BAILEY: Thank you, Your Honor.

4 THE COURT: Anything else from the State?

5 MS. BAILEY: Nothing further.

6 THE COURT: Anything from Defense?

7 MR. FELTS: Just to keep the witnesses sequestered,
8 Your Honor.

9 THE COURT: All right, the witnesses will stay
10 sequestered. I mean, they'll be allowed to go to lunch if
11 they want to.

12 MR. FELTS: Yes, sir.

13 THE COURT: They just can't listen to any - well,
14 let's see, we need to keep them sequestered from people who
15 have already testified. How do we do that?

16 MS. BAILEY: Other than the use of courthouse security,
17 Your Honor, I'm not.

18 THE COURT: Well, I mean, they're going to have to
19 eat lunch.

20 MS. BAILEY: Right.

21 THE COURT: The people, I mean, basically, we're just
22 talking about they can't be around Ms. Milton, Mr. Morris or
23 Mr. Thacker.

24 MS. BAILEY: I can - I can certainly instruct our law
25 enforcement as to that and believe - I have every reason to

1 believe that they will follow that instruction. As to Ms.
2 Milton that's another story. We'll probably need to find a
3 place for her and bring her food, yeah.

4 THE COURT: Okay, if you all can do that then.

5 MS. BAILEY: All right.

6 THE COURT: All right.

7 MR. FELTS: Thank you, Judge.

8 MS. BAILEY: Thank you, Your Honor.

9 THE COURT: All right, let's - we need to get this
10 thing moving. So, let's shoot for about a 45-minute lunch
11 break and then we'll get started back; okay?

12 MR. FELTS: Thank you.

13 THE COURT: All right.

14 OFF THE RECORD

15 (On the record.)

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right, anything from the State before
19 we bring the jury back?

20 MS. BAILEY: Nothing, Your Honor.

21 THE COURT: Anything from the Defense?

22 MR. FELTS: No, sir, Your Honor.

23 THE COURT: All right, let's go ahead and bring the
24 jury in.

25 (Whereupon, the following takes place in the presence of

Lynn Picard - Direct by Ms. Bailey

150

1 the jury.)

2 THE COURT: All right, ladies and gentlemen, welcome
3 back. I hope everyone had a good lunch. We're ready to
4 resume the trial of the case. Ms. Bailey, you can call your
5 next witness.

6 MS. BAILEY: Thank you, Your Honor, the State calls
7 Lynn Picard.

8 THE COURT: All right.

9 Whereupon, Lynn Picard was called to the stand, duly
10 sworn by the clerk and testified as follows:

11 THE CLERK: Please be seated and spell your last name
12 for the record.

13 MS. PICARD: It's P-I-C-A-R-D.

14 DIRECT EXAMINATION

15 BY MS. BAILEY:

16 Q Thank you, and where do you work?

17 A Georgetown County Sheriff's Office.

18 Q And how long have you worked there?

19 A Five years.

20 Q Okay, did you have reason to respond to Mossdale Lane on
21 January 24th of 2009?

22 A Yes, ma'am.

23 Q And what was your role when you were out there?

24 A At that time my capacity was an investigator and
25 assisted with processing the scene.

- 1 Q Okay, did you collect any evidence out there?
- 2 A Yes, ma'am.
- 3 Q I'm showing you what's been previously marked for
- 4 identification as State's Exhibits 32, 33, 34, 35, and 36. If
- 5 you could just take a moment to look at these, 32 through 36.
- 6 Do you recognize those items?
- 7 A Yes, ma'am.
- 8 Q And did you collect those items?
- 9 A Yes, ma'am.
- 10 Q And where did you collect them from?
- 11 A The yard at the residence on Mossdale.
- 12 Q So, did you collect them from the interior or the
- 13 exterior?
- 14 A These were exterior items.
- 15 Q Okay, and were they in a driveway or in the grass or in
- 16 woods?
- 17 A They were in a grassy area.
- 18 Q Okay, and how do you know those are the same ones that
- 19 you collected?
- 20 A It's my writing on the containers that they were placed
- 21 in and I also have it documented based on the numbers that are
- 22 listed on each one.
- 23 Q Okay, and what did you do with them after you collected
- 24 them?
- 25 A I placed them into an evidence locker.

Lynn Picard - Cross by Mr. Felts

152

1 MS. BAILEY: I have no further questions for this
2 witness.

3 THE COURT: All right, cross examination.

4 CROSS EXAMINATION

5 BY MR. FELTS:

6 Q Officer Picard, had you ever been to that location
7 before you got called to the scene or to that location?

8 A Yes, actually I had.

9 Q You had been there?

10 A Yes.

11 Q You're familiar with it?

12 A I wasn't there in a capacity as a law enforcement
13 officer if that's what you're asking.

14 Q No, that's not what I'm asking, just have you ever been
15 there?

16 A Yes, I had on one occasion previously.

17 Q Okay, had you been there, you been inside or you been
18 outside?

19 A I had been inside the residence previously, yes.

20 Q Okay.

21 Q No further questions. Thank you ---

22 A Thank you.

23 Q --- Officer Picard.

24 THE COURT: Redirect?

25 MS. BAILEY: No, Your Honor, the State would just seek

1 to move those pieces of evidence actually into evidence and
2 have permission to publish them.

3 THE COURT: All right, any objection?

4 MR. FELTS: No, sir.

5 THE COURT: All right, State's Exhibits 32, 33, 34, 35
6 and 36 admitted into evidence without objection.

7 MS. BAILEY: Thank you, Your Honor.

8 (Whereupon, State's Exhibit Numbers 32 through 36
9 admitted into evidence and appropriately marked. See index
10 for description of exhibit.)

11 MS. BAILEY: And may Ms. Picard be excused from her
12 subpoena?

13 THE COURT: Any objection?

14 MR. FELTS: No, sir, Your Honor.

15 THE COURT: All right, you're free to go. Thank you
16 very much.

17 A Thank you.

18 MS. BAILEY: The State calls Phil Hanna.

19 Whereupon, Phillip Hanna was called to the stand, duly
20 sworn by the clerk and testified as follows:

21 THE CLERK: Thank you. Please have a seat and state
22 your name for the record.

23 MR. HANNA: It's Phillip Hanna.

24 DIRECT EXAMINATION

25 BY MS. BAILEY:

Phillip Hanna - Direct by Ms. Bailey

154

1 Q And what you do for a living?

2 A I'm an investigator for the Sheriff's Department here in
3 Georgetown County.

4 Q How long have you been an investigator?

5 A For Georgetown County just two and half years. I was an
6 investigator for the Florence County Sheriff's Office for 18
7 and half years.

8 Q All right, and did you have occasion to execute a search
9 warrant pertaining to this case?

10 A Yes, I did.

11 Q And what did you execute search warrant on?

12 A On January 26, 2009, myself, along with Investigator
13 Gary Todd, executed a search warrant at the Georgetown County
14 Detention Center to recover the property of the Defendant.

15 Q Okay, and you had a signed search warrant for that?

16 A Yes.

17 Q And who was - was it signed by a magistrate?

18 A Yes.

19 Q Okay, I'm showing you what's been previously marked as
20 State's Exhibit Number Eight and State's Exhibit Number Nine.
21 If you'll just take a look at those for me.

22 A That's right, yes, ma'am.

23 Q Do you recognize those items?

24 A Yes, ma'am.

25 Q And how do you recognize them?

1 A Clearly the bullet hole in this one and this is some of
2 the items that we recovered from the property there at the
3 jail.

4 Q Okay, and whose property did you recover those from?

5 A These here, this one here I think was - have to refer
6 back to my - I think it was in Cobb.

7 Q Okay, would your notes help refresh your recollection?

8 A Yes, yes.

9 Q All right.

10 A Okay, yes, both of these - that would be Cobb.

11 Q Okay, so, those were both collected off of Matthew Cobb,
12 Jr.?

13 A From his property at the jail.

14 Q Okay, at this time - and what did you do with those
15 items once you recovered them?

16 A These items were photographed and logged into evidence
17 at the Georgetown County Sheriff's Office.

18 MS. BAILEY: At this time the State would like to move
19 those items into evidence.

20 THE COURT: Any objection?

21 MR. FELTS: Without objection, Your Honor.

22 THE COURT: All right, State's Exhibits Number Eight
23 and Nine are admitted into evidence without objection.

24 (Whereupon, State's Exhibit Numbers Eight and Nine
25 admitted into evidence and appropriately marked. See index

Phillip Hanna - Direct by Ms. Bailey

156

1 for description of exhibit.)

2 Q Could you describe what those items are for the jury?

3 A A camouflage blue bandanna and a white T-shirt or just a
4 white shirt.

5 Q Okay, and is there anything remarkable about that shirt?

6 A Yeah, the white shirt had a bullet hole which is in the
7 side of it.

8 Q If you could take a look at these two pieces of evidence
9 for me.

10 A Yes.

11 Q And that is - has been previously marked as State's
12 Exhibit Number Seven along with a necklace and a bracelet.

13 A Yeah, this, this also came out of the property of the
14 Georgetown County Detention Center. This was recovered from
15 the Defendant here.

16 MR. FELTS: Your Honor, at this time I'm going to
17 object to this line of questioning, this testimony based on
18 the improper foundation laid.

19 THE COURT: All right, overruled.

20 MR. FELTS: Your Honor, I think that we need to
21 approach, too.

22 THE COURT: All right, come on up.

23 (Whereupon, a bench conference is held in the presence,
24 but out of the hearing of the jury.)

25 THE COURT: All right, ladies and gentlemen, I need

1 to excuse you back to the jury room for just a minute. Please
2 do not discuss the case even among yourselves at this point in
3 time. Thank you very much.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, Mr. Felts, what's your
7 objection?

8 MR. FELTS: Thank you, Your Honor. My objection is
9 to this particular line of questioning and the testimony or
10 discussing this particular piece of evidence that the witness
11 has is that our position we object to it simply because this
12 particular officer did not get this search warrant. It was
13 another officer that got it. So, this is improper at this
14 point based on this person not being the law enforcement agent
15 who got the search warrant to search my client's property at
16 the detention center.

17 THE COURT: All right, Ms. Bailey.

18 MS. BAILEY: Investigator Hanna actually executed the
19 search warrant and that's why he's testifying as to what he
20 found when he executed that warrant and he's laid that
21 foundation. He's the one that executed the warrant along with
22 someone else.

23 THE COURT: All right, all right, I'm going to
24 overrule your objection because as I understand you're not
25 challenging the validity of the warrant, just the fact that he

Phillip Hanna - Direct by Ms. Bailey

158

1 didn't obtain it.

2 MR. FELTS: He did not obtain it, the affiant is not
3 present. I mean, that, that's - essentially I am challenging
4 the validity of it because he is not the affiant of the
5 warrant. He didn't, he doesn't, he wasn't present or that I
6 can tell, his name's not on the search warrant affidavit. So,
7 therefore, I think that to be able to discuss whatever he ---

8 THE COURT: Well, I mean, who signed the return as to
9 what was found?

10 MS. BAILEY: Your Honor, it'll take me just a moment
11 to find that.

12 MR. FELTS: Judge, I've got Gary Todd, Investigator
13 Gary Todd on, on the one that I've got.

14 MS. BAILEY: Your Honor, I can make this a Court's
15 Exhibit. I have a document that's titled return at the top and
16 it has a list of all the evidence that was taken as a result
17 of this search warrant. It says, "This inventory was made in
18 the presence of Investigator Gary Todd," but it was signed by
19 Phil Hanna and I can authenticate this and admit it if
20 necessary.

21 THE COURT: Okay, let me see that. What - so, you're
22 saying that Phil Hanna ---

23 MS. BAILEY: He signed the return.

24 THE COURT: The return to the warrant?

25 MS. BAILEY: Yes, Your Honor.

1 THE COURT: Well, if he's the one that signed the
2 return to the warrant then I overrule the objection. He can
3 testify to it.

4 MR. FELTS: Okay.

5 THE COURT: All right.

6 MS. BAILEY: Thank you, Your Honor.

7 THE COURT: All right, anything else?

8 MS. BAILEY: Nothing from the State.

9 THE COURT: All right, let's bring the jury back in.

10 (The following takes place in the presence of the jury.)

11 BY MS. BAILEY:

12 Q All right, let's back up for just one ---

13 THE COURT: Hold for one second, let the jury get
14 back. All right, now you can continue.

15 BY MS. BAILEY:

16 Q Investigator Hanna, this T-shirt was found on the person
17 of Matthew Cobb, Jr.?

18 A That's correct.

19 Q In his, in his items at the jail?

20 A That was in his property at the jail.

21 Q Okay, just want to show the jury. All right, and I've
22 handed you two pieces of jewelry and some pictures of that
23 jewelry. Do you recognize those items?

24 A Yes, I do.

25 Q And where were those taken from?

Phillip Hanna - Direct by Ms. Bailey

160

1 A These were recovered from the property of Mr. Rondell
2 Carter.

3 Q Okay.

4 A At the Georgetown County Detention Center.

5 Q All right, and could you describe what you have in your
6 hand?

7 A To the left here, my left it's a gold in color tennis
8 bracelet, to the right it's a gold in color necklace.

9 Q That picture that you have that's State's Exhibit Number
10 Seven are those true and accurate pictures of those items?

11 A Yes, they are.

12 MS. BAILEY: All right, at this time the State would
13 seek to move State's Exhibit Number Seven into evidence.

14 THE COURT: All right, State's Exhibit Number Seven
15 admitted into evidence over Defendant's objection.

16 MR. FELTS: Thank you, Your Honor.

17 THE COURT: Thank you.

18 (Whereupon, State's Exhibit Number Seven is admitted into
19 evidence and appropriately marked. See index for
20 description.)

21 MS. BAILEY: Permission to publish to the jury.

22 THE COURT: All right.

23 MS. BAILEY: The State has no further questions for
24 this witness.

25 THE COURT: All right, Mr. Felts, cross-examination?

1 MR. FELTS: Could I have just a moment, Your Honor?

2 THE COURT: All right.

3 MR. FELTS: No questions for this witness, Your
4 Honor.

5 THE COURT: All right, you may step down.

6 A Thank you, sir.

7 THE COURT: Thank you. All right, Ms. Bailey, you
8 can call your next witness.

9 MS. BAILEY: Thank you, Your Honor. The State calls
10 Jamie Powell and she's in lockup. Oh, Your Honor, is
11 Investigator Hanna released from his subpoena the State would
12 request?

13 THE COURT: Any objection?

14 MR. FELTS: No, sir, Your Honor.

15 THE COURT: All right, he's free to go. Thank you
16 very much.

17 Whereupon, Jamie Powell was called to the stand, duly
18 sworn by the clerk and testified as follows:

19 THE CLERK: Thank you. Have a seat and state your
20 name for the record, please.

21 MS. POWELL: Jamie Powell.

22 DIRECT EXAMINATION

23 BY MS. BAILEY:

24 Q Ms. Powell, I need you to scoot up and speak into that
25 microphone and talk real loud and clear so we can all hear

Jamie Powell - Direct by Ms. Bailey

162

1 you; okay?

2 A Jamie Powell.

3 Q All right, and first right off the bat, Ms. Powell, are
4 you currently incarcerated?

5 A Yes, ma'am.

6 Q And in what county are you incarcerated?

7 A Williamsburg County.

8 Q And what's that for?

9 A It's for a paraphernalia charge.

10 Q Does it have anything to do with the case that we're
11 here today about?

12 A No, ma'am.

13 Q Okay, and when did that incident occur?

14 A About two months ago.

15 Q When you say paraphernalia do you mean drug
16 paraphernalia?

17 A Yes, ma'am.

18 Q Okay, and Ms. Powell, were you on Mosssdale Lane, at [REDACTED]
19 Mosssdale Lane on January 23rd of 2009?

20 A Yes, ma'am.

21 Q Okay, can you tell us what happened that day?

22 A You talking about that night rather?

23 Q Wherever you want to start.

24 A I was asleep because William was in the process of going
25 to pick Christina up.

- 1 Q Okay, did you know William Douglas?
- 2 A Yes, ma'am.
- 3 Q And how did you know William?
- 4 A I was friends with him and Christina.
- 5 Q Okay, and so, were you hanging out at his house?
- 6 A Yes, ma'am.
- 7 Q Okay, so, what's the first thing you remember after you
- 8 woke up?
- 9 A The first thing I remember after I woke up was Rondell
- 10 and them coming in kicking the door in and putting a gun in my
- 11 face.
- 12 Q Okay, and how many people do you remember coming into
- 13 the house?
- 14 A Four people.
- 15 Q All right, did you know any of them before this
- 16 incident?
- 17 A I knew two of them.
- 18 Q And who did you know beforehand?
- 19 A Junior and Cobb.
- 20 Q Okay, and when you say Junior, do you mean Robert
- 21 Richardson, Jr.?
- 22 A I assume that was his - yes, ma'am.
- 23 Q Okay, and you recognized him, you recognized him there?
- 24 A Yes, ma'am.
- 25 Q Okay.

Jamie Powell - Direct by Ms. Bailey

164

1 A I didn't recognize anyone to start with because
2 everybody had masks.

3 Q And what kind of masks did they have on?

4 A Bandannas and their faces were covered up.

5 Q And what kind of bandannas?

6 A I presume a blue one, blue or a dark color.

7 Q All right, I'm going to show you what's been previously
8 marked as State's Exhibit Number Three. Does that look like
9 what they had on?

10 A Yes, ma'am; yes, ma'am.

11 Q And how many of them were covering up their face?

12 A All of them.

13 Q All of them, okay, and so, after they came in and
14 pointed a gun at you what happened next?

15 A They told me to strip.

16 Q All right, and then what?

17 A I took my clothes off.

18 Q Okay, did they take anything from you?

19 A I didn't have anything on but what I was sleeping in.

20 Q Okay.

21 A They didn't have nothing to take.

22 Q And where in the house were you sleeping?

23 A On the couch or the loveseat.

24 Q Okay, and was that near a door?

25 A It was faced as I am from the jury to the loveseat

1 maybe, maybe as she is from the jury, excuse me, as she is
2 from the jury that's how the couch, loveseat was faced from
3 the door.

4 Q And who all was home when you were there initially?

5 A Just me.

6 Q Just you, and did you invite anybody into the house?

7 A No, ma'am, I didn't. I couldn't. I was sleep.

8 Q Okay, and how long had you been asleep?

9 A I had been asleep a good, a good 12 hours.

10 Q Okay.

11 A But I had been up for three or four days prior to that.

12 Q And were you using drugs?

13 A Yes, I was.

14 Q Okay, at that - before you fell asleep obviously?

15 A Yeah.

16 Q All right.

17 A Yes, ma'am.

18 Q And so, after they made you strip did you get to put
19 your clothes back on at some point?

20 A At one point, yes, I did.

21 Q Okay, and did any of them take their masks off at any
22 point?

23 A Yes, after a good hour everybody seemed to relax.

24 Q Okay, and so, did they take those bandannas off?

25 A Yes, ma'am.

Jamie Powell - Direct by Ms. Bailey

166

- 1 Q And do you see anybody in the courtroom who was there
2 with you who was one of those guys that came in?
- 3 A Yes, ma'am.
- 4 Q And who do you see?
- 5 A Rondell.
- 6 Q And could you point to him?
- 7 A Yes, ma'am.
- 8 Q Tell us which one he is?
- 9 A Yes, ma'am.
- 10 Q Can you describe on the record which one he is?
- 11 A Yes, ma'am.
- 12 Q Okay, go ahead.
- 13 A That's him over there.
- 14 Q The one sitting at the defense counsel table?
- 15 A Yes, sir - yes, ma'am, I'm sorry.
- 16 Q And at some point did William and Christina come home?
- 17 A Yes, ma'am.
- 18 Q Okay, and before they came home did anybody - what did
19 the guys do?
- 20 A Tore the house apart.
- 21 Q All right, did you hear them discussing any kind of
22 plan?
- 23 A Yeah, they had - they were saying ----
- 24 MR. FELTS: Objection, hearsay.
- 25 MS. BAILEY: Your Honor, it's a statement of

1 Defendants as to their purpose.

2 THE COURT: Only, no, not as to any others. I sustain
3 the objection. If you're talking about this Defendant, yes.
4 Any other Defendants I sustain the objection.

5 MS. BAILEY: All right.

6 BY MS. BAILEY:

7 Q Did you hear this - did you hear Rondell Carter state
8 anything about ---

9 MR. FELTS: Objection, leading.

10 THE COURT: Sustained.

11 Q Did you hear Rondell Carter say anything?

12 A Yes, he said a lot. He said that he was going to - that
13 I was going to die if William didn't come home in a certain
14 length of time. He asked where William was several times.
15 Several times I told him I didn't know.

16 Q What else did he say?

17 A He said if William wasn't home within a certain time I
18 was going to die.

19 Q Did Rondell Carter give orders to any of the other folks
20 that were there with him?

21 MR. FELTS: Objection, leading.

22 THE COURT: No, I overrule that. I'll allow it. Go
23 ahead. Ask it again.

24 Q Did Rondell Carter give any - specifically did he give
25 any orders to anybody that was there with him?

Jamie Powell - Direct by Ms. Bailey

168

1 A Yes, he ordered them to take everything out the house.

2 Q Okay, what happened - at some point did William and
3 Christina come home?

4 A Yes, they did.

5 Q And what happened then?

6 A He did the same to them that he did to me.

7 Q Which was what?

8 A Made everybody strip and put guns to everybody's,
9 everybody that came in they had guns to their heads.

10 Q And what do you remember next?

11 A I remember, I remember bits and pieces because like I
12 say I was sitting - the way the loveseat was faced we were all
13 scattered out. I remember him making William strip and I
14 remember Christina flipping out because I guess, I mean, she
15 wanted to protect her home. She had just come home from rehab
16 and she wanted to protect her family and she wanted to protect
17 her new home, her new life. So, she was fighting and she told
18 them to get out of her home. She had tussled behind the,
19 behind the bar and I remember a gun going off.

20 Q All right, before that did Christina come in at the same
21 time as the other ---

22 MR. FELTS: Objection, leading.

23 MS. BAILEY: Your Honor, I'm not suggesting the
24 answer.

25 THE COURT: No, that's overruled. I'm going to allow

1 it. Go ahead.

2 BY MS. BAILEY:

3 Q Did Christina come in at the same time as William?

4 A No, William - I remember William coming in first.

5 Q Okay, and how long did it take for Christina to come in?

6 A I'm not sure.

7 Q When she came in did you observe anything strange about
8 her, any injuries or anything?

9 A I'm not sure. I don't remember.

10 Q Okay, so, let's go back to you mentioned there was a -
11 in your words there was a tussle in the kitchen. What
12 happened there?

13 A I remember her getting shot in the kitchen.

14 Q Okay.

15 A I don't remember where because it was beyond my eye
16 view.

17 Q Okay, so, you couldn't see what happened?

18 A No, I couldn't.

19 Q Did you hear a gunshot?

20 A Yeah, I did.

21 Q And who had a gun at that point?

22 A I'm not, I'm not sure.

23 Q Okay, did you see Rondell Carter with a gun?

24 A Yeah, I remember, I do remember Rondell hitting her in
25 the forehead with a gun.

Jamie Powell - Direct by Ms. Bailey

170

1 Q Okay, and did you - what do you remember next after,
2 after she was shot?

3 A Not a whole lot.

4 Q Did you fall back asleep at some point?

5 A At some point I did because I have, like I said I had
6 been up for days. I was scared and honestly once I realized
7 that I wasn't going to die I went back to sleep once I
8 realized that the situation had lightened.

9 Q At some point did you leave the residence?

10 A Yes, I did.

11 Q And who went with you?

12 A The other guys, the other two guys.

13 Q Okay, so, two guys went with you and were they Rondell
14 Carter, either one of them?

15 A No, it was not.

16 Q Okay, so, two of the other guys went with you?

17 A Yes.

18 Q And where did you all go?

19 A I'm not sure where we went.

20 Q Okay, did you think about escaping at that point?

21 A I did but I have asthma. They had guns. I mean, had I
22 jumped out I wouldn't have made it far anyway because I have
23 chronic asthma.

24 Q And why did they take you with them?

25 A They wanted me to write a check, and at the time I went

1 along with it because I was like well maybe at some point they
2 will allow me, you know what I'm saying, to go - walk into
3 somewhere where I can get help, but that never happened.

4 Q Okay, so, when you say they wanted you to write a check
5 what do you mean by that?

6 A They wanted me to actually take a check, one of
7 William's checks in somewhere and cash it.

8 Q Okay, and did that work out?

9 A No, it never happened.

10 Q Okay, did you, did you stop anywhere that you could cash
11 a check?

12 A No, we never stopped anywhere.

13 Q Okay, so, when you left the house where did you all go?

14 A I'm not sure. It was dark and I was in the back seat.

15 Q Okay, did you stop anywhere?

16 A We stopped at someone's house but I'm not sure where
17 exactly we stopped at.

18 Q All right, and then what happened?

19 A And then we left.

20 Q And?

21 A And went back.

22 Q When you say you went back where did you go back to?

23 A We went back to William's house.

24 Q Okay, and what's the next thing that you remember?

25 A The next thing I remember is the next day when the

Jamie Powell - Direct by Ms. Bailey

172

1 police come in.

2 Q And tell us about that.

3 A I remember Christina being on the bed and had a gunshot
4 wound to her leg and I remember, I remember getting up at one
5 point and asking her is she all right and the guys were still
6 sitting there with the guns with me and Christina and then it
7 wasn't long the police come in and rescued us.

8 Q Okay, and at that point how many guys were at the
9 house?

10 A Two.

11 Q Okay, and do you know which ones?

12 A The two younger ones.

13 Q The two younger ones were there.

14 A Uh-huh.

15 Q Okay.

16 MS. BAILEY: Beg the Court's indulgence.

17 THE COURT: All right.

18 BY MS. BAILEY:

19 Q When you traveled away from William's house in the car
20 with the guys you testified just a minute ago that you went to
21 somebody's house?

22 A Uh-huh.

23 Q What happened there? Did anybody get out of the car or
24 did you all stay in the car?

25 A I think one of the guys had discussed something with

1 someone and that was it.

2 Q Okay, do you know who?

3 A No, I'm not sure who..

4 Q Okay, did anybody exit the car?

5 A Huh-uh.

6 Q Okay.

7 REPORTER: Is that a no? I'm sorry.

8 A No, ma'am.

9 MS. BAILEY: All right, beg the Court's indulgence.

10 THE COURT: All right.

11 MS. BAILEY: The State has no further questions for

12 this witness.

13 THE COURT: All right, Mr. Felts, cross examination.

14 MR. FELTS: Yes, sir, Your Honor. May I have just a

15 moment?

16 CROSS EXAMINATION

17 BY MR. FELTS:

18 Q Good afternoon, Ms. Powell.

19 A Good afternoon.

20 Q Now, you, you know William Douglas and Christina

21 Carroll?

22 A Yes, sir.

23 Q And as a matter of a fact you were staying in that house

24 or the house out there.

25 A Yes, sir.

Jamie Powell - Cross by Mr. Felts

174

1 Q Is that a yes?

2 A Yes, sir.

3 Q You had been there for a few days?

4 A Yes, sir, off and on.

5 Q Staying there just for William or as a friend of

6 William's?

7 A As a friend of both of theirs.

8 Q And you - you said you had, you had been smoking crack,

9 been up for a couple of days, three or four days?

10 A Yes, sir, I had.

11 Q And after being up for a few days you slept for I think

12 you testified for like 12 hours at a time?

13 A Yeah.

14 Q Now, you've talked to the police at one point in time, I

15 believe after the fact you gave a statement to the cops ---

16 A Yes.

17 Q --- at some point, told them your, whatever your version

18 of the story was; correct?

19 A Yes, sir.

20 Q And you never mentioned, you hadn't mentioned it today,

21 you never mentioned the two black people that were there that

22 were with you all; correct, that were in the house, aside from

23 the Defendants that you've already talked about there was two

24 other people there that you hadn't talked about.

25 A I wasn't ask any questions about two other people.

1 Q But you never mentioned them the first time you talked to
2 the police; did you?

3 A Yes, I did.

4 Q Okay, you didn't say anything to them about those two
5 people that, Rosa Milton, you didn't say anything about her
6 being there?

7 A Excuse me?

8 Q Rosa Milton and Thermond Seward they were present at the
9 house ---

10 A Uh-huh.

11 Q --- allegedly?

12 A Yes, they were.

13 Q And you hadn't said anything about them today?

14 A Because I wasn't asked.

15 Q But you talked about William and Christina being there;
16 correct?

17 A Yeah, because I were asked specifically about them.

18 Q Do you recall - you said at some point in time
19 everything quieted down or something to that affect?

20 A Yeah.

21 Q There was some drug use going on at that point in time;
22 wasn't there?

23 A I'm not sure.

24 Q Did you use drugs that night?

25 A No.

Jamie Powell - Cross by Mr. Felts

176

1 Q You didn't, you didn't smoke any crack or anything like
2 that?

3 A No, I did not.

4 Q Did you just decide not to since you had been smoking or
5 been up for three or four days?

6 A No, there was none to my ability to smoke.

7 Q You said something about a tussle in the kitchen but you
8 couldn't see anything?

9 A Exactly.

10 Q Okay, you didn't see who shot Christina?

11 A No, not exactly I didn't.

12 Q Now, you also mentioned that you fell back asleep at
13 some point?

14 A Yes, I did.

15 Q So, during the middle of a robbery and a shooting and
16 all this other stuff you fell asleep?

17 A Yes, I did.

18 Q At some point in time you left the residence; correct?

19 A Yes, I did.

20 Q You didn't call the police?

21 A I didn't have a phone.

22 Q But your friends were back at the house; correct?

23 A Some of them.

24 Q And then evidently the next morning you woke up and
25 there were two people there, two of the, I guess, the alleged

1 whatever, my client wasn't in there?

2 A No, he was not.

3 Q Now, you gave a statement to the police; correct?

4 A Correct.

5 Q And at some point do you recall telling the police that
6 there was only three people that showed up at the house?

7 A I don't recall that.

8 Q Do you remember at any point in time telling the police
9 the incident didn't look like a robbery?

10 A No, I don't.

11 Q Perhaps after - you had testified that Christina had
12 gotten shot. I believe you - we've covered the fact that you
13 said everything calmed down at some point?

14 A Yeah.

15 Q And so, you don't, you don't recall telling the police
16 that it didn't even look like a robbery?

17 A I said it had calmed down.

18 Q Now, when you left was whoever you left with, and of
19 course you didn't call the cops, didn't you smoke some - at
20 some point smoke, on the ride smoke some weed or smoke some
21 crack?

22 A I don't smoke weed and, no, I didn't smoke any crack.

23 Q Now, you and Christina and William are friends; correct?

24 A Yes, we are.

25 Q You guys all use drugs together?

Jamie Powell - Cross by Mr. Felts

178

- 1 A Yes, we had.
- 2 Q You all use crack together?
- 3 A Yes, we had.
- 4 Q And you weren't there to smoke crack together at the
- 5 Mossdale house?
- 6 A Yeah.
- 7 Q You were there to smoke crack with them?
- 8 A I was there to smoke crack with them. I mean, crack
- 9 that's what - how I got introduced to them. That's how I met
- 10 them so.
- 11 Q It's how you met William and Christina?
- 12 A Yeah.
- 13 Q Now, you, you told law enforcement at some point that
- 14 you did leave with two of the suspects. I know we've covered
- 15 that here in some detail, but you told law enforcement you
- 16 went to Thermond Seward's house; do you recall that?
- 17 A Yes, that's where we went.
- 18 Q And then you went to Kingstree; is that correct?
- 19 A I'm not sure exactly.
- 20 Q But you were riding around ---
- 21 A Exactly.
- 22 Q --- with, with two of the suspects or two of the people?
- 23 A Exactly, yes.
- 24 Q Not Mr. Carter, not my client?
- 25 A Exactly.

1 Q Okay, and this was all during this alleged robbery or
2 housebreaking, whatever you want to call it?

3 A Exactly, yes, sir.

4 Q You were riding around in a truck with two of them and
5 didn't call the police?

6 A It was not a truck.

7 Q Excuse me?

8 A It wasn't a truck.

9 Q A truck, I'm sorry.

10 A It was ---

11 Q You were riding around in some sort of vehicle?

12 A Yes.

13 Q Okay.

14 MR. FELTS: No further questions, Your Honor. Thank
15 you.

16 THE COURT: All right, redirect.

17 REDIRECT EXAMINATION

18 BY MS. BAILEY:

19 Q When you were out riding around with the two guys did
20 you have a phone?

21 A No, sir - no, ma'am, I didn't.

22 Q Did you have any way to call for help?

23 A No, ma'am, I didn't.

24 Q Did you have an opportunity to get help?

25 A No, ma'am, I didn't.

Jamie Powell - Redirect by Ms. Bailey

180

1 Q How long did this entire situation last until the police
2 got there?

3 A It lasted almost - it lasted from that night sometime
4 till that morning, the next day.

5 Q So, it was - was it daylight when the police got there?

6 A Yes, ma'am.

7 Q Did Rosa Milton and Thermond Seward come to the house at
8 any point?

9 A Yeah, they came in with, with William and Christina.

10 Q And what do you remember about them being there?

11 A I remember them being done the same way they were.
12 Everything they had was taken from them.

13 MR. FELTS: Your Honor, I'm going to object to this
14 question because it's cumulative.

15 THE COURT: I'll sustain it.

16 MS. BAILEY: Your Honor, he asked on cross about it.

17 THE COURT: Yeah, that's true. You did. I'll allow
18 it. Go ahead.

19 BY MS. BAILEY:

20 Q Go ahead.

21 A He asked them to - well, he made them take everything
22 out their pockets, everything they had, and for them to get on
23 their knees and with their hands behind their heads and at
24 some point he let them go, threatened their families, their
25 grandchildren if they told or got any help in any form

1 whatsoever.

2 Q When you say he who do you mean?

3 A Rondell.

4 Q No further questions.

5 THE COURT: All right, you may step down.

6 MS. BAILEY: Your Honor, the State requests that Ms.
7 Powell be released from her subpoena. She is in the custody
8 of the Williamsburg County Sheriff's Department but here as
9 our guest because she's under subpoena.

10 THE COURT: All right, any objection?

11 MR. FELTS: No objection, Your Honor.

12 THE COURT: All right, she's released from her
13 subpoena then.

14 MS. BAILEY: Thank you.

15 THE COURT: All right, you can call your next witness.

16 MS. BAILEY: The State calls Christina Carroll.

17 THE COURT: All right.

18 Whereupon, Christina Carroll is called to the stand, duly
19 sworn by the clerk and testified as follows:

20 THE CLERK: Please be seated and state your name for
21 the record.

22 MS. CARROLL: My name is Christina Carroll.

23 THE COURT: Ms. Carroll, would you spell your last
24 name please?

25 MS. CARROLL: C-A-R-R-O-L-L.

Christina Carroll - Direct by Ms. Bailey

182

1 THE COURT: Thank you. All right, Ms. Bailey.

2 DIRECT EXAMINATION

3 BY MS. BAILEY:

4 Q Christina, can you tell us a little bit about how you
5 got to Mossdale Drive on January - first of all, were you at
6 Mossdale Drive on January 23rd, 2009?

7 A Yes, ma'am, I arrived ---

8 Q What brought you there?

9 A William brought me to Mossdale Lane that evening. He
10 was bringing me home from Columbia.

11 Q Could you lean forward and speak into that microphone.
12 You can pull it little closer to you if that helps.

13 A Yes.

14 Q So, what were - why were you in Columbia?

15 A I was getting released from drug rehab.

16 Q Okay, and tell us what you remember about pulling up to
17 Mossdale Drive.

18 A What I remember is when we got to the house William
19 exited the truck and proceeded to go into the house and I was
20 trying to gather some belongings from the truck and I heard a
21 bunch of commotion and hollering and I got - I'm kind of - I'm
22 ---

23 Q Let's back up a little bit. Who was with you?

24 A Thermond Seward and Rosa and William.

25 Q Okay, and had you all been shopping or ---

1 A Yes, ma'am.

2 Q --- somewhere? Okay, where had you been shopping?

3 A I was at the - we went to the Piggly Wiggly and got

4 groceries because it was a new house we were moving into and

5 coming home from a, from a institution like that I wanted a

6 home-cooked meal. So, we went to the grocery store and on the

7 way to the house.

8 Q Okay, and now tell us what you remember after you pulled

9 up.

10 A William and Thermond and Punkin was going to the door to

11 go in.

12 Q When you say Punkin who do you mean?

13 A Rosa.

14 Q Okay.

15 A Was going inside to the house and I had some stuff

16 inside the truck that I wanted to take in with me and once I

17 got it out of the truck I started to go to the door and I

18 heard them tussling inside and I heard a bunch of hollering

19 and ---

20 Q And when you pulled up to the house were there any other

21 cars there?

22 A No, ma'am.

23 Q And did you - do you remember passing any cars on your

24 way in or anything?

25 A No, no, ma'am.

Christina Carroll - Direct by Ms. Bailey

184

1 Q Okay.

2 A The house looked empty when we got there.

3 Q Okay, and then what happened?

4 A Once I heard all the commotion and fighting inside the
5 house I went and I hid around the side of the house, behind
6 the air conditioner.

7 Q Okay, just hold that thought for just one second.

8 MS. BAILEY: I'm showing the witness what's been
9 previously marked as State's Exhibit Number Two.

10 BY MS. BAILEY:

11 Q And it'll be put up on the screen there for you. Is
12 this the door - first of all, do you recognize this picture?

13 A Yes, ma'am.

14 Q What's that a picture of?

15 A The house in Rose Hill.

16 Q And is this the door that you were just describing?

17 A No, ma'am.

18 Q Which door did you go in?

19 A The screen porch door.

20 Q Okay.

21 A Yes, we would pull up to park, we'd pull right there in
22 front of the house and we would go in that door.

23 Q All right, just one second. This is - the jury is
24 looking at State's Exhibit Number One; and so, which door did
25 you go in?

1 A The screen porch door.

2 Q Okay, is that it on the screen?

3 A Yes, ma'am.

4 Q All right, and so, what happened after you heard the

5 tussle?

6 A I ran behind the house and hid behind the air

7 conditioner.

8 Q Okay, and now the jury is looking at State's Exhibit

9 Number Two. Is that the air conditioner and is it in that

10 picture?

11 A Yes, ma'am.

12 Q Okay, what happened next after you were hiding behind

13 the air conditioner?

14 A I heard somebody in front of the house hollering and

15 saying something, they just was hollering about, "I know

16 you're out there, come out, I'm going to get you," and he was

17 hollering out bad names and ---

18 Q I know it's difficult but when you say bad names what do

19 you mean?

20 A Bitch and stuff like that.

21 Q All right.

22 A And the next thing I know he was coming from around the

23 front of the house to the back of the house where I was and he

24 found me and he roughed me up and got me out from behind the

25 air conditioner and hit me in the head right here.

Christina Carroll - Direct by Ms. Bailey

186

- 1 Q Okay, when you say he who do you mean?
- 2 A Rondell.
- 3 Q Okay, is he sitting in the courtroom today?
- 4 A Yes.
- 5 Q And could you describe for the court reporter and for
- 6 the record where he's sitting?
- 7 A Rondell is sitting at that table.
- 8 Q Okay, next to the two white guys over there?
- 9 A Yes, ma'am.
- 10 Q Okay, and what else happened then? So, did the gun go
- 11 off at all at that point?
- 12 A No.
- 13 Q Okay.
- 14 A They forced me into the house after that.
- 15 Q All right, I'm going to show you what's been previously
- 16 marked as State's Exhibit Number Five for identification only.
- 17 I just need you to take a look at that, and do you recognize
- 18 that photograph?
- 19 A Yes.
- 20 Q Is that photograph - what is it a picture of?
- 21 A That's a picture of my forehead above my left eyebrow.
- 22 Q And is that picture a fair and accurate - how did you -
- 23 what caused that?
- 24 A Injury, that was caused by butt end of a pistol.
- 25 Q Okay, and was that ---

1 A A gun that they were - that he had.

2 Q Okay, and is that picture a fair and accurate
3 representation of your injury that day?

4 A Yes, ma'am.

5 Q All right.

6 MS. BAILEY: At this point the State would seek to
7 introduce State's Exhibit - what's been previously marked as
8 State's Exhibit Number Five into evidence.

9 THE COURT: Any objection?

10 MR. FELTS: Your Honor, my only objection would be a
11 403 objection.

12 THE COURT: All right, let me see it. All right, all
13 right, I'm going to overrule your objection. I'll allow it.
14 State's Exhibit Number Five admitted into evidence over
15 Defendant's objection.

16 (Whereupon, State's Exhibit Number Five admitted into
17 evidence and appropriately marked. See index for description
18 of exhibit.)

19 MS. BAILEY: And permission to publish it to the jury?

20 THE COURT: All right.

21 BY MS. BAILEY:

22 Q And again, could you describe what the jury is looking
23 at? They're looking at the picture now.

24 A I was - where he hit me in the head with a gun.

25 Q Okay, lean forward, talk into the microphone.

Christina Carroll - Direct by Ms. Bailey

188

1 A That was where he hit me in the head with the gun when
2 he found me outside.

3 Q And when you say, when you say he who do you mean?

4 A Rondell.

5 Q Okay, what happened next? What do you remember next?

6 A He forced me into the house and ---

7 Q When you say forced you, what do you mean?

8 A Drug me by my arms.

9 Q Okay, and then what happened?

10 A Once we got into the house I was forced into the kitchen
11 by the bar and they made me dump out my purse and my - and all
12 my belongings out on the counter and they stripped me of the
13 jewelry I was wearing and took all my money and stuff that was
14 inside my purse, my cell phone so I couldn't - and I was
15 trying to call for help, you know, but I couldn't.

16 Q Was there a gun involved at this point?

17 A They had, yeah, they had the gun.

18 Q Okay, and you say they. How many did you - how many do
19 you remember there being then?

20 A There were four people there.

21 Q Four people and can you describe them as best you can
22 remember?

23 A Two were young, about young men and then there was a
24 middle-aged probably in his early thirties and then there was
25 Rondell.

- 1 Q Okay, and did you know any of them?
- 2 A Yes, ma'am.
- 3 Q How - which ones did you know from before?
- 4 A I knew Richard Richardson, the one they call Jr.
- 5 Q Okay, and did you recognize him right away?
- 6 A After he pulled down the scarf from his face I
- 7 recognized him right away.
- 8 Q And do you remember - when you - you say pulled down the
- 9 scarf, were they wearing, were they disguising their faces in
- 10 any way?
- 11 A Yes, ma'am, with bandanas.
- 12 Q And how were they disguising their faces?
- 13 A With bandannas and scarves.
- 14 Q Okay, and what happened after - let's back up. You say
- 15 they took your jewelry. Can you describe some of the jewelry
- 16 that they took from you?
- 17 A William had given me a diamond tennis bracelet and a
- 18 diamond engagement ring. The only thing that they took that I
- 19 remember was the diamond tennis bracelet.
- 20 Q Okay, handing up what's been previously marked State's
- 21 Exhibit Number Seven, along with a diamond tennis bracelet.
- 22 Do you recognize that picture and that actual bracelet?
- 23 A Yes, ma'am.
- 24 Q And how do you recognize those?
- 25 A That diamond tennis bracelet belonged to me.

Christina Carroll - Direct by Ms. Bailey

190

1 Q And when was the last time you saw it?

2 A The night of the robbery.

3 Q And where did you, where did you see it go the last time
4 you saw it? What happened to it?

5 A They took it.

6 Q Okay.

7 A Rondell and the other men took it.

8 Q All right, what happened next?

9 A I was bleeding from the forehead really bad and I was in
10 the kitchen and I was really mad and upset and this was my
11 first night home. I didn't - I really, really did not know
12 this was going to happen and then the - Richard Richardson was
13 in the kitchen. He was facing the side door. When you come
14 in the screen door the kitchen is right here and the other
15 door that you're seeing in the picture was - goes out that way
16 and he was standing right there in the kitchen and I started
17 to try and push him out the door, hollering and screaming,
18 "Get out of my house, get out of my house," and, and there was
19 also Matthew Cobb was in the kitchen, too, and one of them had
20 the gun and that's when I got shot in the leg.

21 Q When you say gun, what kind of gun did you see?

22 A It was a black handgun.

23 Q Was it big or little?

24 A Big.

25 Q Do you know anything about guns?

1 A Not very much.

2 Q What color?

3 A Black.

4 Q I'm going to show you what's been previously marked as

5 State's Exhibit Number Four. Take a look at that for a

6 minute. Do you recognize that?

7 A Yeah, yes, ma'am.

8 Q And please tell the jury how you recognize this, State's

9 Exhibit Number Four.

10 A That's what I got shot in the leg with.

11 Q Now, let's talk about that shooting. Tell us what

12 happened.

13 A I was trying to force, force them out of the kitchen to

14 outside and they kept threatening that they were going to

15 shoot me but I was just so angry and mad. I wanted them out

16 of the house so bad. I wasn't thinking that I could get hurt.

17 I wasn't - it never dawned on me that I would get shot.

18 Q And so, what happened?

19 A The gun went off and it went in my thigh and in the

20 front of my thigh and out the back of my thigh.

21 Q I'm going to show you what's been previously marked as

22 State's Exhibit Number Six. Do you recognize that picture?

23 A Yes, ma'am.

24 Q Or what's in that picture?

25 A My leg after, after they shot me.

Christina Carroll - Direct by Ms. Bailey

192

1 Q Okay, is that a fair and accurate representation of your
2 injury?

3 A Yes, ma'am.

4 MS. BAILEY: All right, at this point the State would
5 seek to move what's been previously marked as State's Exhibit
6 Number Six into evidence and publish it to the jury.

7 THE COURT: Any objection?

8 MR. FELTS: Your Honor, my same objection as the last
9 picture. It's 403.

10 THE COURT: All right, all right, I'm going to
11 overrule the objection. I'll allow it, admit it into evidence
12 over Defendant's objection.

13 (Whereupon, State's Exhibit Number Six admitted into
14 evidence and appropriately marked. See index for description
15 of exhibit.)

16 BY MS. BAILEY:

17 Q Now, when you were shot in the leg did the bullet stay
18 in your leg?

19 A No, ma'am.

20 Q What happened?

21 A It went in the front of my leg and came straight out the
22 back of my leg. Well, actually, it is on the side of my, on
23 my - side of my thigh. So, it's not going straight through my
24 leg. It's going through the side of my leg, but I think, I
25 mean, I'm glad, you know, because if it would have went

1 straight through the middle it might have hit a vein or a, you
2 know.

3 Q Do you remember who shot you?

4 A Yes, ma'am.

5 Q And what's your memory of that?

6 A Matthew Cobb.

7 Q Okay, and do you remember Rondell Carter making any
8 statements up to this point?

9 A He, he was instructing him to shoot me.

10 Q And so, what happened after you got shot?

11 A I fell down on to the floor and I started saying, "You
12 shot me." I said, "Somebody call an ambulance. I'm going to
13 bleed to death," and ---

14 Q Did anybody call them?

15 A No.

16 Q Okay, and what happened next?

17 A They let William come into the kitchen and pick me up
18 off the floor and tend to my leg to try and stop the bleeding
19 and they put me in the living room on the couch.

20 Q What's the next thing that you remember?

21 A I remember Rondell and trying to negotiate with William
22 on a ransom.

23 Q Okay, and did you hear Rondell say what he wanted?

24 A Lots of money.

25 Q Okay, do you remember a number?

Christina Carroll - Direct by Ms. Bailey

194

1 A No.

2 Q Okay, and then what happened?

3 A Jamie and the two boys left to try and go get some
4 money.

5 Q You say the two boys, which ones do you mean?

6 A When I say boys I mean the young ones, McCray I think
7 his name was and Cobb.

8 Q Okay.

9 A No, no, she left with Richardson, Junior, and I think -
10 I'm not sure of the other one who went with her.

11 Q Okay, and then, then what happened?

12 A It was a long time before they came back, but when they
13 finally did come back and they didn't have any money then they
14 had to - they were trying to think of something else, a
15 different way for them to get money and that's when they
16 decided to take William and go and try and cash checks off his
17 business to get money.

18 Q And what's your relationship to William?

19 A William is my fiancé.

20 Q And what kind of business does he have?

21 A He had - it's not operating no more. He had a pallet
22 mill business.

23 Q And was it successful?

24 A Yes, ma'am.

25 Q Did he make a lot of money?

1 A Yes, ma'am.

2 Q Okay, so, what's the next thing that you remember?

3 A I remember, I remember when they left they left me and

4 Jamie in the custody, in, you know, being guarded by Matthew

5 Cobb and the other young boy by gun, at gunpoint.

6 Q Okay, did you feel free to leave at that point?

7 A No.

8 Q All right, what happened next?

9 A I, I - Jamie was asleep on the loveseat and I was in my

10 bedroom and I was just praying and waiting and hoping for help

11 to come.

12 Q Okay, were you in a lot of pain?

13 A Yes.

14 Q At some point did somebody offer you some drugs?

15 A Yes.

16 Q And did you take them?

17 A Yes.

18 Q What kind of drugs?

19 A I smoked weed and I was drinking alcohol.

20 Q And how long did this - well, we'll get back to that.

21 What's the next thing that you remember after going into the

22 bedroom?

23 A I believe I went to sleep while they were gone with

24 William because there was a time period where I know I was

25 asleep. It - we got to the house and it all started about 11

Christina Carroll - Direct by Ms. Bailey

196

1 o'clock at night. Then I woke up in the morning probably
2 about, about seven or eight o'clock and there was someone
3 guarding the door, the front door with the gun. They were
4 sitting on the floor to make sure that we didn't get out, and
5 I was just reading, I was reading the Bible and some
6 literature from rehab trying to, just trying to get a grasp on
7 the whole thing.

8 Q And what's the next thing that you remember?

9 A The next thing I remember was hearing a loudspeaker from
10 the Georgetown County SWAT team was outside, and they were
11 announcing their presence and the two suspects that were still
12 inside the house they had jumped up and started running around
13 the house and they were like, "Oh, my God, what are we going
14 to do now," and I told them, I said, "If I were you I would
15 run," and I went out the door and I said, I said, "I'm being
16 held against my will. I've been shot," and that's when they
17 helped me.

18 Q Okay, and at that point who were the two suspects in the
19 house?

20 A Matthew Cobb and McCray.

21 Q And do you know - when did you see Rondell Carter leave?
22 Did you see him leave?

23 A No, ma'am, I was asleep when they left.

24 Q Okay, now, how long would you say this whole thing
25 lasted? When did it start?

1 A It started at 11 o'clock in the evening.

2 Q And about what time did the SWAT team get there?

3 A About 11 in the morning.

4 Q Okay, and during this point and I'm sorry that this is
5 embarrassing. I just want to get it all out there to show
6 we're not trying to hide anything. At some point did you and
7 William go into the bedroom?

8 A Yes, ma'am.

9 Q And what happened when you all were in there?

10 A We had intercourse.

11 Q Okay, did you feel like you could leave the house at
12 that point?

13 A No.

14 Q And why not?

15 A Because they were - it was all four of them against just
16 us and they had weapons and we didn't.

17 Q Okay, and you mentioned earlier that you smoked some
18 marijuana. Where did - how did you get that? Was it already
19 there?

20 A The suspects gave it to us.

21 Q And which ones?

22 A Rondell Carter.

23 MR. FELTS: Objection, Your Honor. We've got a matter
24 we need to take up outside the presence of the jury.

25 THE COURT: All right, ladies and gentlemen, let me

Christina Carroll - Direct by Ms. Bailey

198

1 excuse you back to the jury room for a brief moment. We'll
2 bring you back out in just a second. Do not discuss the case
3 even among yourselves at this point in time.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, Mr. Felts, your objection?

7 MR. FELTS: Your Honor, there was testimony from the
8 witness that the marijuana she smoked came from my client.
9 It's highly, highly, highly prejudicial. That's a bell that
10 cannot be un-rung. At this time we're going to move for a
11 mistrial simply because of the testimony that came out of that
12 witness's mouth.

13 THE COURT: All right.

14 MR. FELTS: A curative instruction can't fix that. I
15 mean, it's - the bell's been rung.

16 THE COURT: All right, Ms. Bailey.

17 MS. BAILEY: Your Honor, given the serious nature of
18 this charge, sharing a little bit of marijuana is very minor
19 and not highly prejudicial at all. In addition to that,
20 there's been lots of testimony of drug use between the other
21 Co-Defendants and the victims and it's part of the res gestae
22 of the crime.

23 THE COURT: All right.

24 MR. FELTS: Judge, I mean, it's a very serious - a lot
25 of serious charges. My client is looking at life without

1 parole. I mean, the jury cannot hear that information.

2 THE COURT: Okay, all right, I - I'm not going to
3 grant your motion for a mistrial. I don't think it's so
4 prejudicial as to deny your client - an unfair trial, plus, as
5 I recall, most of the drug use that has been made a part of
6 this trial was brought out by the Defense. So, I'm going to
7 deny your motion for a mistrial. All right, anything from the
8 State?

9 MS. BAILEY: Nothing from the State.

10 THE COURT: Anything from Defense?

11 MR. FELTS: No, sir, Your Honor.

12 THE COURT: All right, let's bring the jury back in.

13 (Whereupon, the following takes place in the presence of
14 the jury.)

15 THE COURT: All right, Ms. Bailey, continue your
16 questioning.

17 BY MS. BAILEY:

18 Q When you pulled up to the house did you expect anybody
19 to be there?

20 A Just Jamie.

21 Q Okay, did you invite anybody to the house?

22 A No, ma'am.

23 Q Was anybody allowed to go into that house other than
24 Jamie?

25 A No, ma'am.

Christina Carroll - Cross by Mr. Felts

200

1 MS. BAILEY: I have no further questions.

2 THE COURT: All right, Mr. Felts.

3 MR. FELTS: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. FELTS:

6 Q Good afternoon, Ms. Carroll.

7 A Hello.

8 Q Now, you've already testified to - that you were in
9 rehab in Columbia, I believe, right about the time this
10 incident, was that for - that was for drug use?

11 A Yes, sir.

12 Q It was for - your drug of choice is that crack?

13 A It used to be.

14 Q Now, you, you've been ---

15 A I'd like to say I have over a year clean and sober.

16 Q I'm sorry, what was that? I couldn't hear you.

17 A I have over a year clean and sober.

18 Q You've been arrested before; haven't you?

19 A Yes.

20 Q You've been convicted of giving false information to the
21 police?

22 A No, not that I recall.

23 Q Not in 2006?

24 A I think that was just - that was a minor charge and some
25 kind of technicality. I can't remember. That was the first

1 year I moved to South Carolina.

2 Q Now, you've been convicted of some drug offenses, too?

3 A Yes, sir.

4 Q I'm sorry, I couldn't hear you.

5 A Yes.

6 Q Now, William Douglas back here, that's your fiancé or

7 that's ---

8 A Yes.

9 Q --- he's, he's your fiancé?

10 A Yes.

11 Q You all have known each other for a while; haven't you?

12 A Yes.

13 Q And you've talked about this case with him since this

14 thing happened a couple of years ago; hadn't it?

15 A Of course.

16 Q And you've talked about it and talked about what you're

17 going to say?

18 A No.

19 Q But you love him; don't you?

20 A Yes, very much.

21 Q Okay, now, you're his fiancé; right? Now, you gave

22 statements - you told the police, excuse me, you gave the

23 police a couple of statements; correct?

24 A Yes.

25 Q And in those statements you never identified Rondell as

Christina Carroll - Cross by Mr. Felts

202

1 the shooter or as hitting you in the head; correct?

2 A I don't recall. I don't recall exactly what I gave in
3 my statement to them.

4 Q Well, would you agree with me that in your first
5 statement that you ---

6 A I ---

7 Q --- did not ID my client, Rondell Carter, as the person
8 who shot you or the person who hit you in the head?

9 A I may not have.

10 Q And quite - and furthermore, you testified on direct
11 examination that Matthew Cobb shot you?

12 A Yes, sir.

13 Q Do you recall that in your statement to the police that
14 you said whoever hit me in the head was the same person who
15 shot me?

16 A I remember saying that, but I, I stick by my testimony
17 that Rondell is the one that came outside and got me and hit
18 me in the head.

19 Q So, were you ---

20 A I had a ---

21 Q --- did you tell the police the truth at the time?

22 A That was the truth to my knowledge to my ability to
23 remember. I had sustained an injury to the head and it was a
24 very traumatic experience to go through.

25 Q So, you remember better right after the incident or do

1 you remember better two and half years down the road after
2 you've had time to talk to people about it?

3 A I remember better after with a clear head.

4 Q Now, you said you smoked some marijuana the night of the
5 incident?

6 A Yes, I did.

7 Q And isn't it also true that you told the police that -
8 strike that. Did you drink some liquor ---

9 A Yes, I did.

10 Q --- when you smoked some marijuana?

11 A Yes, I did.

12 Q What did you drink?

13 A I believe it was some kind of clear liquor.

14 Q Clear liquor?

15 A Yeah.

16 Q How much did you drink?

17 A Probably quite a bit.

18 Q Quite a bit?

19 A I don't know, maybe a pint.

20 Q A pint of clear liquor?

21 A Yeah.

22 Q And marijuana?

23 A Yes.

24 Q Now, the solicitor asked you about having intercourse
25 with William during this whole thing.

Christina Carroll - Cross by Mr. Felts

204

1 A Yes.

2 Q And you said yes?

3 A Yes.

4 Q You had intercourse?

5 A I had blacked out. After I was shot in the leg I
6 blacked out for a period of time to - and then that's, that's
7 - I have a, a - from where they - we got home to the house and
8 after I got shot in the leg, which was a couple of hours,
9 probably about an hour or so later and then a couple of hours
10 after that I had, I had a blackout.

11 Q You had a blackout before you got to the house?

12 A Yeah - no, no, after I got shot in the leg.

13 Q So, did - but you said you had intercourse. Did you ---

14 A I don't, I don't ---

15 Q --- have intercourse while you were blacked out?

16 A --- I don't remember the physical act of doing it. I
17 remember being told that we did.

18 Q So, being told that you did evidently - did you do that
19 in front of everybody in the house during the commission of
20 this whatever happened at your house that night?

21 A I think that we were behind closed door.

22 Q You think?

23 A I think. You can't imagine what it was like going
24 through that situation. You just can't imagine what it was
25 like.

1 Q Now, you have given a couple of statements to the
2 police; correct?

3 A Yes.

4 Q And in those statements you never said anything about
5 Thermond Seward or Rosa Milton; did you?

6 A I believe in my second statement we did discuss them.

7 Q But you didn't say it in your first statement; did you?

8 A No.

9 Q Now, you know Rosa; don't you?

10 A Yes.

11 Q And you know Thermond.

12 A Yes.

13 Q And you and Rosa and William you guys smoke crack
14 together?

15 A We ---

16 Q Or you used to?

17 A I used to.

18 Q Now, you didn't tell the police about Rosa or Thermond
19 there the first time?

20 A I didn't think that they - I didn't think that they had
21 anything to do with it. So, I didn't mention them. I didn't
22 think - I didn't want to have to drag them into it.

23 Q So, they were there, they were witnesses to all this and
24 you didn't tell the cops about them?

25 A No.

Christina Carroll - Redirect by Ms. Bailey

206

1 Q You said you'd been clean for a year; correct?

2 A Yes, sir.

3 Q If you took a drug test today would you pass it?

4 A Yes, sir. I have a newborn son. I have a five month
5 old son.

6 Q I'm sorry. I couldn't hear you.

7 A I have a five month old child.

8 Q Now, you're currently on probation in Williamsburg
9 County?

10 A Yes, sir.

11 Q What are you on probation for?

12 A Possession of cocaine and DUI.

13 Q Okay.

14 MR. FELTS: That's all I have, Your Honor. Thank
15 you.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MS. BAILEY:

19 Q When you gave that first statement to police when did
20 they take that?

21 A Directly after it had happened.

22 Q Were - what was the location of you when they took it?

23 A I believe I was in the hospital or I was in the van or I
24 can't remember exactly when they took it.

25 Q Did they give you pain medication at the hospital? Do

1 you remember what they gave you at the hospital?

2 A No, I don't.

3 Q Do you remember giving that statement?

4 A No. The only thing I remember when I was at the
5 hospital was asking for William.

6 Q Okay.

7 A I wanted to know where he was because Rondell took him
8 away.

9 Q Mr. Felts talked with you about your smoking and
10 drinking that night. Were you drinking and smoking marijuana
11 before or after ---

12 MR. FELTS: Objection, it's cumulative, Your Honor.

13 MS. BAILEY: Your Honor, it goes to timeline. He went
14 into how much she drank and I just want to make sure they know
15 when.

16 THE COURT: I think it's cumulative. I'm going to
17 sustain the objection.

18 BY MS. BAILEY:

19 Q As part of your probation in Williamsburg County do they
20 drug test you?

21 A Yes, ma'am.

22 Q Has your probation been violated?

23 A No, ma'am.

24 Q Have you failed any drug tests?

25 A No, ma'am.

1 Q No further questions.

2 THE COURT: All right, you may step down.

3 All right, ladies and gentlemen, we've been at it a
4 little while. Let's go ahead and take about a 15 minute
5 break, give you an opportunity to stretch your legs, use the
6 restroom, get something to drink, whatever the case may be.
7 Do not discuss the case even among yourselves at this point in
8 time. We'll take about a 15-minute break and then we'll
9 resume the trial. Everyone else please remain seated while
10 the jury is excused. All right, thank you.

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right, anything from the State before
14 we recess?

15 MS. BAILEY: Nothing, Your Honor.

16 THE COURT: Anything from the Defense?

17 MR. FELTS: No, sir, Your Honor.

18 THE COURT: All right, let's take about a 15-minute
19 recess. Okay?

20 MS. BAILEY: Thank you.

21 OFF THE RECORD

22 (On the record.)

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right, anything from the State before

1 we bring the jury in?

2 MS. BAILEY: No, Your Honor.

3 THE COURT: Anything from the Defense?

4 MR. FELTS: No, sir, Your Honor.

5 THE COURT: All right, let's bring the jury back in.

6 (Whereupon, the following takes place in the presence of
7 the jury.)

8 THE COURT: All right, ladies and gentlemen, welcome
9 back. Ms. Bailey, you can call your next witness.

10 MS. BAILEY: Thank you, Your Honor. The State calls
11 William Douglas.

12 THE COURT: All right.

13 Whereupon, William Douglas was called to the stand, duly
14 sworn by the clerk and testified as follows:

15 THE CLERK: Please be seated and state your name for
16 the record.

17 MR. DOUGLAS: William Douglas.

18 THE COURT: All right, Ms. Bailey.

19 DIRECT EXAMINATION

20 BY MS. BAILEY:

21 Q Mr. Douglas, did you ever live on Mosssdale in Georgetown
22 County?

23 A Yes, ma'am.

24 Q Is it Mosssdale Drive or Mosssdale Lane?

25 A I think it's lane.

William Douglas - Direct by Ms. Bailey

210

1 Q Okay, and where was that?

2 A In the Rose Hill section.

3 Q Was it a remote location?

4 A Yes, ma'am, it was about a mile, mile and a half down a
5 dirt road on the river.

6 Q Okay, was it easy to find?

7 A No, ma'am.

8 Q How long did you live there?

9 A Probably a month, month and a half.

10 Q All right.

11 A All this happened I left, didn't want to live there
12 anymore.

13 Q And on January 23rd of 2009 what were you doing that
14 day?

15 A That was a Friday. I'm not sure about the dates. I
16 went to Columbia to pick Christina up from rehab. I came back
17 home. We went by the grocery store to get some groceries.
18 We didn't have any groceries in the house and as we was going
19 home, going down that dirt road going home a car come by us
20 out of there which I thought was strange because it was going
21 so fast but there's other people lives in there. So, I didn't
22 pay it much attention. We went on up and pulled up in the
23 yard. It was dark. The house was dark. I got out of the
24 truck and went in the house. When I got in the house I seen
25 Jamie laying on the couch and I hollered at her, you know, to

1 get up, that me and Christina was back and that's when all
2 this chaos started and people started come running out of the
3 bedrooms. They run out with guns, shot in the floor, towards
4 my feet, screaming and hollering. I can't remember what they
5 said and I was just in shock.

6 Q And how many were - how many of them, how many people
7 were there?

8 A Four.

9 Q Were, were they concealing their identity?

10 A I only remember at this time one having a bandanna on.

11 Q Okay, but do you, do you remember a bandanna though?

12 A Yes, ma'am.

13 Q Okay, and do you remember guns?

14 A Yes, ma'am.

15 Q How many guns do you remember?

16 A Two.

17 Q Can you describe those?

18 A I remember a big black one and I remember a small one.

19 I don't remember exactly what it look like.

20 Q Mr. Douglas, I'm going to show you State's Exhibit
21 Number Four. It's been secured for the courtroom but if you
22 could take a look at this. Does that look familiar?

23 A Yes, ma'am.

24 Q Where have you seen that before?

25 A In that house that night.

William Douglas - Direct by Ms. Bailey

212

1 Q Who had it?

2 A Rondell Carter.

3 Q Do you see Rondell Carter in the courtroom today?

4 A Yes, ma'am.

5 Q And could you describe for us where he is?

6 A He's sitting right there.

7 Q So, what's the next thing that you remember?

8 A When they come out they was hollering and screaming. I
9 didn't know what was going on. I was just kind of backing up
10 trying to keep my eyes on him to see what he was going to do.
11 I didn't have any idea what was going on, and then after a few
12 moments, whatever, he told me to take all my clothes off. I
13 took all my clothes off and they went through my clothes, took
14 my money and my jewelry and stuff and then I don't know within
15 a minute or two I got to put my clothes back on, and I
16 remember Christina when I first seen her she was hit in the
17 head and was bleeding. All I could see was like her eyes and
18 her teeth, you know, her whole face was covered in blood, and
19 she went into the kitchen and she started fighting with one of
20 them and then they had a tussle going on in there and then
21 that's when Rondell started telling Cobb to shoot her. Well,
22 the gun went off, and I don't know how this happened but the
23 gun went off and he shot hisself in the leg also and he cut -
24 like split his pants and burned him. He went to jumping up
25 and down and hollering and pulled his pants down to see what

1 kind of shape he was in. Rondell at this time told me, said,
2 "Well look what I got for help," and I thought, you know, that
3 was kind of odd. Well, everything gets calmed down. She's on
4 the floor and I start hollering trying to get her to calm down
5 and I got some, I think, bed sheets or something and tied her
6 leg up and put her on the couch trying to get her to quit
7 bleeding.

8 Q And let's back up just a minute. Can you describe the
9 jewelry that you had on that day?

10 A I had on a two gold necklace.

11 Q I'm showing you what's been previously admitted as
12 State's Exhibit Number Seven along with an actual gold
13 necklace. Do you recognize anything in this photograph or
14 either of these pieces of jewelry?

15 A Yes, ma'am.

16 Q Where have you seen those before?

17 A That used to belong to me and that was Christina's, the
18 bracelet was Christina's. The necklace was mine.

19 Q Were you wearing the necklace that day?

20 A Yes, ma'am.

21 Q And is that picture an accurate picture of the necklace?

22 A Yes, ma'am.

23 Q And when was the last time you saw this jewelry?

24 A That night.

25 Q And where did it go that night?

William Douglas - Direct by Ms. Bailey

214

1 A They took it.

2 Q When you say they who you mean?

3 A There was so much chaos I can't exactly say which one of
4 them took it.

5 Q Okay, how many were there?

6 A Four.

7 Q All right, well, what's the next thing that you
8 remember?

9 A Well, they kept screaming and telling me they had to
10 have money, they had to have money, if I didn't get them some
11 money they was going to kill me. I didn't ---

12 Q Now, hold on just one second. What did you, what'd you
13 do for a living back then?

14 A I owned a pallet mill. I built pallets and sold wooden
15 dunnage.

16 Q Was that a successful business?

17 A Yes, ma'am, very much till the economy went bad.

18 Q Did you normally have a lot of cash?

19 A At times I would.

20 Q Okay, and so, what happened next?

21 A Well, they were trying to figure out how they were going
22 to get money and I was trying to explain to them this is a
23 Friday night and I had no way to get any money. So, they was
24 wanting to go to the bank the next morning. When they finally
25 decided to do that and it took me an hour to convince them the

1 bank's not open on Saturdays. So, then they decided that they
2 would, two of them was going to take Jamie and go try to get
3 checks cashed.

4 Q Now, did they give you an amount of money they wanted?

5 A The whole amount or just for that, at that ---

6 Q What, what did they tell you?

7 A At that time they figured about the most they could get
8 would be about \$250 out of a store.

9 Q Now, initially, did they demand more than that?

10 A The large amount they wanted was 75,000 what it
11 originally started and then as time went on somehow or another
12 it ended up being 60. I don't know exactly how, but it was -
13 they wanted a very large amount of money.

14 Q Now, when you say they who you mean?

15 A Rondell and Cobb and I can't remember the other one's
16 name right this second.

17 Q Okay, did you know any of these folks from before this
18 incident?

19 A Junior Richardson.

20 Q Okay, and how long before you recognized that he was
21 there?

22 A As soon as he walked out.

23 Q All right, were they concealing themselves in some way?

24 A He was I guess because he knew I knew him, but he -
25 time, time I seen him I knew who he was.

William Douglas - Direct by Ms. Bailey

216

1 Q All right, so, what happened when you started trying to
2 get some checks cashed?

3 A The next morning?

4 Q Whenever you did.

5 A The next morning before I did, me and Rondell left that
6 morning, left there and went to the bail bondsman Chip Daniels
7 tried to get, he said that we could get some cash there. We
8 went there and he couldn't do nothing about it, said, told us
9 to come back Monday. We left there. Let's see where - we
10 left there and was going down 521, stopped at 521 store and I
11 was going to get one cashed in there and for some reason I
12 don't know why he let me go in that store by myself. I've got
13 no idea why but I wasn't in there but just a few minutes then
14 he came in.

15 Q Okay, now, let's back up just a second. When you all
16 were out riding around trying to get this money did - who were
17 you with?

18 A Rondell.

19 Q And did he have a gun with him?

20 A If he did I didn't see it.

21 Q Okay, so, why did you go along with him?

22 A Because he had a cell phone and he kept telling me that
23 all he had to do was mash that button and if that phone rung
24 that the other boys had they would know that I was trying to
25 do something and they was going to kill Christina and Jamie.

1 I didn't know whether to believe it or not but I couldn't
2 trust it.

3 Q Okay.

4 A I couldn't take that chance.

5 Q So, what happened when you were in the 521?

6 A I went in there and I started talking to one of them
7 girls trying to tell her what was going on. There was a big
8 fan blowing there and she couldn't half understand me and I
9 didn't want to holler out loud because I didn't want him to
10 hear me and then I got mad, and when I got mad the woman, I
11 guess the manager of the store come out from behind that -
12 there was a divider, partition there. She came out and I told
13 her and she believed me. She was going to grab the phone
14 right then and call and I told her, I said, "No, let me leave
15 and get down the road," because I don't want, you know, him to
16 figure out what's going on and do what he said he was going to
17 do, because I didn't know whether he could or not but I
18 couldn't risk it.

19 Q All right, what's the next thing you remember?

20 A Us going down the road and the police coming up behind
21 us.

22 Q What happened next?

23 A We were, were we going down the road and the police come
24 up behind us and he started telling me that the police was
25 coming up behind us. So, I reached and put my seatbelt on. I

William Douglas - Direct by Ms. Bailey

218

1 told him, I said, "Well, they probably just going somewhere
2 else, you know, one of them go - they'll probably just go
3 around us."

4 Q Who was driving?

5 A He was.

6 Q And what car were you all in?

7 A I had an '06 Toyota Tacoma.

8 Q Okay.

9 A And one come around us and when they got there the one
10 in front slid sideways in the road and got us stopped. I
11 jumped out and took off running back to the police car.

12 Q And what happened next?

13 A We went back to 521 store I guess ---

14 Q Let me start with this. What did you tell the police?

15 A I told them that this guy had me against my will and
16 that I had a girlfriend and another girl back at my house, at
17 my residence that they were holding hostage back there, they
18 needed to get somebody back there because the girl had been
19 shot.

20 Q All right, and what happened next?

21 A We went back to 521 store and the two deputies were
22 talking I guess to figure out that I was telling the truth and
23 when they did they called somebody else and we went back out
24 there.

25 Q All right, did you go back out to Mossdale Lane after

1 that?

2 A I went to the hay field in the front, never back to the
3 house. We was at - there's a hay field right at the beginning
4 at the highway. We stopped right there.

5 Q Okay, all right, let's back up to the, the beginning and
6 get some details in here. About what time did all this start?

7 A Must've been around 11.

8 Q And when you pulled up to the house who was, who was
9 riding with you?

10 A When I originally went to the house?

11 Q Uh-huh.

12 A Christina and Thermond and Punkin.

13 Q And where did you pick up Thermond and Punkin?

14 A At the Piggly Wiggly. Thermond's car had broken down in
15 Columbia and he was going to borrow one of my trucks and get a
16 U-Haul tower and go back and get it.

17 Q All right.

18 A And that's why he went there with me.

19 Q Were you expecting anybody to be at your house when you
20 got there?

21 A Just Jamie.

22 Q Okay, had you invited anybody inside the house?

23 A No, ma'am. I didn't even want anybody to know where I
24 lived.

25 Q And why is that?

William Douglas - Direct by Ms. Bailey

220

1 A I just didn't.

2 Q All right, at ---

3 A I was trying to get Christina somewhere off from
4 everything.

5 Q At one point in time were you involved with drugs?

6 A Yes, ma'am.

7 Q Okay, at this time were you involved with drugs in
8 January 2009?

9 A Yes, ma'am.

10 Q When they - when property was taken off of you did they
11 make you take your clothes off? Did you testify to that?

12 A Yes, ma'am.

13 Q At some point did you get to put your clothes back on?

14 A Yes, ma'am.

15 Q At some point did you end up in the bedroom?

16 A Yes, ma'am.

17 Q And how did that come about?

18 A It just, just got later on into the night, later on into
19 the night and just went to bed.

20 Q All right, did you ---

21 A I don't think I slept any but it was just somewhere to
22 get kind of by myself, you know.

23 Q Okay, did you feel like you could leave at that point?

24 A No, ma'am, there was no leaving there.

25 Q Did you try to, did you ever think about jumping out the

1 window or calling for help or anything like that?

2 A Well, I couldn't jump out the window or run nowhere
3 being able to left these two girls there. Christina couldn't
4 run. She was shot in the leg.

5 Q And at any point did you feel like you could escape?

6 A No, ma'am.

7 Q Did you have a phone on you?

8 A They took it when I got there.

9 Q Did they ever give it back to you?

10 A No, ma'am.

11 Q Did Rosa or Punkin and Thermond did they stay for the
12 whole thing?

13 A No, ma'am.

14 Q When did they leave?

15 A Probably 45 minutes after we got there, maybe an hour,
16 I'm not real sure about the time. It wasn't that long.

17 Q Okay, this Defendant, Rondell Carter, what statements do
18 you remember him making to you?

19 A He kept telling me that he was - had to have that money
20 or he was going to have to shoot me.

21 Q What else did he say to you?

22 A He said so much I just I don't know exactly everything
23 he said. It was just, it was chaotic, it was crazy.

24 Q Okay.

25 MS. BAILEY: Beg the Court's indulgence.

William Douglas - Direct by Ms. Bailey

222

1 THE COURT: All right.

2 BY MS. BAILEY:

3 Q Did they ever tell you why they went to your house?

4 A Why they came to my house?

5 Q Of all the houses in Georgetown County?

6 A He just told me that he, you know, he knew that I was
7 running a business, that I should have money.

8 Q Okay, have you been in trouble before?

9 A Yes, ma'am.

10 Q What have you been in trouble for?

11 A Possession.

12 Q Possession of what?

13 A Cocaine.

14 Q How long has that been?

15 A A year and a half, two years ago, two years ago I think.

16 Q Did I, did I handle that case?

17 A No, ma'am.

18 Q All right, and did I make any deals with you ---

19 A No, ma'am.

20 Q --- about that case?

21 MS. BAILEY: The State has no further questions for
22 Mr. Douglas.

23 THE COURT: All right, Mr. Felts.

24 CROSS EXAMINATION

25 BY MR. FELTS:

1 Q Good afternoon, Mr. Douglas.

2 A Good afternoon.

3 Q Now, Ms. Bailey just asked you if you were involved with

4 drugs at the time of the incident back in 2009. You said yes;

5 right?

6 A Yes, during that time I was.

7 Q Your drug of choice is crack cocaine?

8 A It was. I've got over a year clean.

9 Q I'm sorry. I couldn't understand you.

10 A I said and I also have over a year clean.

11 Q You, you agree with me that there was crack pipes that

12 were found at your residence?

13 A I don't know if there was or not.

14 Q Did you smoke crack that night?

15 A No, I did not.

16 Q The day before?

17 A Yes.

18 Q And you smoke with Christina?

19 A No, she was in rehab. You talking about the day before?

20 Q Yes?

21 A No, she was in rehab.

22 Q But you got her that day from rehab though; didn't you?

23 A I got her that day, not the day before.

24 Q The day of the incident is what you're talking about,

25 that's when you picked her up from rehab the day of the

William Douglas - Cross by Mr. Felts

224

1 incident?

2 A Yes.

3 Q Now, you gave a statement to the police; didn't you?

4 A Yes.

5 Q And you never mentioned Rosa or Thermond being there;
6 did you?

7 A Not the first time I didn't.

8 Q You did not mention two people that were present that
9 were witnesses that got allegedly released. You didn't tell -
10 didn't say anything about that to the cops?

11 A I didn't the first time.

12 Q That's because you had something to hide from them?

13 A Hide from who?

14 Q Hide from the police perhaps the fact there were drugs
15 in the house?

16 A No.

17 Q Is that because you wanted to be out in the country away
18 from everybody?

19 A I mean, the police went there, the police went there
20 that ---

21 THE COURT: Hold it. Only one can talk at a time.
22 Let him ask the question, and then answer it at that time.
23 All right, go ahead and ask your question again.

24 Q Is that the reason that you wanted to be out in the
25 country so nobody knew where you were, the cops couldn't find

1 you because you hide drugs in the house?

2 A No, it wasn't.

3 Q Now, you said on direct that it was just chaos?

4 A Yeah, I'm sure you've never lived through anything like
5 that.

6 Q It was chaos; right?

7 A Chaos.

8 Q Were you under the influence of crack at the time?

9 A No.

10 Q And you said you didn't know who took your jewelry?

11 A The chaos was them running out screaming and hollering,
12 being shooting in the - holes in the floor around my feet.

13 Q You didn't know who took your jewelry? That's what you
14 just testified to.

15 A I don't know, I don't know exactly which one of them
16 took it, no, I do not. I mean, I'm more worried about getting
17 shot than I am about which one of them got my jewelry in their
18 hand.

19 Q Now, you said you went to - at some point in time that
20 you and my client left; correct?

21 A Yes, the next morning.

22 Q You said my client didn't have a gun on him?

23 A Not as I know of he didn't. If he did I didn't see it.

24 Q And you're a pretty big guy; aren't you?

25 A Yeah.

William Douglas - Cross by Mr. Felts

226

1 Q You're bigger than my client; aren't you?

2 A Yeah.

3 Q So, you got in the truck with him and went to two places
4 of business, one to a bail bondsman and then one to 521 mini-
5 mart where you could have gotten away, could've called the
6 cops, could've done something, you didn't do it; did you?

7 A I did when I got to 521.

8 Q After you had been, you'd ridden to a bail bondsman's
9 office?

10 A Yeah, yes, you're right.

11 Q And when you went in the 521 you went in by yourself?

12 A He let me go in there by myself. I do not know why but
13 then he came in.

14 Q You accused him of kidnapping and he let you got into a
15 521 mini-mart by yourself?

16 A He told me, he, he told me ---

17 Q Answer the question.

18 A Ask me the question again.

19 MS. BAILEY: Your Honor, there is no question.

20 Q The question is you went in by yourself to 521 mini-
21 mart; correct?

22 A Yes, to begin with.

23 Q You're accusing my client of kidnapping you; correct?

24 A Yes.

25 Q And isn't it true that ---

1 A Can I finish?

2 Q I'm asking you another question.

3 MS. BAILEY: Your Honor, he has a right to explain his
4 answer.

5 THE COURT: Okay, you can explain your answer.

6 A The reason being is like I told you a while ago, he told
7 me that if he made a phone call back to them that they would
8 kill those girls. I can't take this kind of chance. I can't
9 jump on him and go to wrestling him and he wins and gets these
10 girls killed. I can't do something stupid and him go and do
11 that and these girls get killed.

12 Q Isn't it true when you went into the 521 mini-mart that
13 the first girl that you tried to talk to didn't believe you?

14 A No, she didn't. She was young. The older lady walked
15 out there and she did. Thank God.

16 Q Now, isn't it true that my client actually came into the
17 521 mini-mart and asked you to buy some sausage wraps for him?

18 A No, that ain't what he asked me to buy him but he did
19 come in there.

20 Q Asked you to buy you - buy him some cigarettes?

21 A He asked me to buy him a pack of cigarettes.

22 Q Didn't tell you to buy him a pack of cigarettes; did he?

23 A He didn't what?

24 Q He just asked you to buy him a pack of cigarettes?

25 A He asked me would I buy him a pack of cigarettes. I

William Douglas - Cross by Mr. Felts

228

1 have no idea why.

2 Q I didn't ask you why but he asked you to buy him some
3 cigarettes and you bought them?

4 A Sure. What was I going to do? Tell him no?

5 Q Now, when you were --

6 A I was just, I was biding my time until I could get
7 something done and I did.

8 Q Mr. Douglas, I hadn't asked you a question yet.

9 A I was finishing explaining myself.

10 Q Now, my question - the question I have for you is that
11 when you talked to the cops right after this incident you said
12 that when you guys left 521 mini-mart you saw a blue light
13 behind you; correct?

14 A Yes, after we got down the road a piece.

15 Q And then you said - you told the police that my client
16 was worried about the police stopping him because he didn't
17 have a driver's license; correct?

18 A That's what he said.

19 Q Yeah, not about, "Hey, I'm kidnapping somebody, I'm
20 worried I'm going to get arrested?" He didn't say that; did
21 he?

22 A That's what he said. I don't know why he said that.
23 That's what he said.

24 Q But he didn't say it; did he?

25 A Didn't say what?

1 Q He didn't say he was worried about being arrested for
2 kidnapping or armed robbery or anything like that. He said no
3 driver's license.

4 A No, he said - he was, "What am I going to do? I ain't
5 got no driver's license," but that's what he said. Why he did
6 I have no idea but that's what he said. I mean, why would I
7 tell - why wouldn't, why wouldn't I just tell him that he was
8 worried about that or not said anything at all. You asked for
9 the truth.

10 Q Mr. Douglas, you, you left the 521 mini-mart?

11 A Yes.

12 Q After you got the people to call the police?

13 A Yes.

14 Q You didn't stay there?

15 A No.

16 Q So, you went back and got in the truck with the alleged
17 kidnapper?

18 A Yes.

19 Q Let's go back to the house. There was some testimony
20 earlier from Ms. Carroll that at some point in time during
21 this chaos or whatever you guys had intercourse; didn't you?

22 A Yes.

23 Q And at some point in time she performed oral sex on you
24 in front of everybody?

25 A No.

William Douglas - Redirect by Ms. Bailey

230

1 Q That's not true?

2 A No.

3 Q But you had intercourse amidst this whole deal?

4 A Yes.

5 MR. FELTS: That's all I have, Your Honor. Thank
6 you.

7 THE COURT: All right, redirect.

8 REDIRECT EXAMINATION

9 BY MS. BAILEY:

10 Q When you were in the 521 mini-mart were you able to cash
11 any of those checks you were trying to cash?

12 A No, ma'am.

13 Q Why not?

14 A I don't have any clue other than the lady that run the
15 store it was no management there.

16 Q Okay, so, when you weren't able to get Rondell any cash
17 did he request anything else while you were there in the
18 store?

19 A He wanted me to buy him a pack of cigarettes.

20 Q Okay, was that - did he know that you weren't going to
21 be able to get cash from those checks?

22 MR. FELTS: Speculation, Your Honor, objection.

23 THE COURT: Sustained.

24 MS. BAILEY: No further questions.

25 THE COURT: All right, you may step down. You can

1 call your next witness.

2 MS. BAILEY: Beg the Court's indulgence for just one
3 moment.

4 THE COURT: All right.

5 MS. BAILEY: The State calls Herman McCray. Your
6 Honor, at this time the State would also request that William
7 Douglas and Christina Carroll be released from their
8 subpoenas.

9 THE COURT: Any objection?

10 MR. FELTS: Yes, sir, Your Honor.

11 THE COURT: Okay, if he objects we'll keep them here.

12 Whereupon, Herman McCray, Jr., was called to the stand,
13 duly sworn by the clerk and testified as follows:

14 THE CLERK: Thank you. Please have a seat and state
15 your name for the record.

16 MR. MCCRAY: My name is Herman McCray.

17 THE COURT: Mr. McCray, please spell your last name,
18 please.

19 MR. MCCRAY: M-C-C-R-A-Y.

20 THE COURT: All right, Ms. Bailey.

21 DIRECT EXAMINATION

22 BY MS. BAILEY:

23 Q For clarification are you a Junior?

24 A Yes, ma'am.

25 Q Okay, Mr. McCray, do you know the person sitting over

Herman McCray, Jr. - Direct by Ms. Bailey

232

1 there at the defense table?

2 A Yes, ma'am.

3 Q Who do you see sitting over there that you know?

4 A Rondell Carter.

5 Q Okay, how do you know him?

6 A He was involved in a crime that I witnessed.

7 Q And were you - did you know him before that?

8 A No, no, ma'am.

9 Q Okay, so, how - let's go to January 23rd of 2009. What
10 do you remember about that day?

11 A So many things.

12 Q Well, what's the first thing that you remember?

13 A I remember him having a gun.

14 Q Let's, let's start with that morning when you woke up.
15 What's the first thing you remember that day?

16 A The first thing I remember that day, meeting up, meeting
17 up with him and Matthew Cobb.

18 Q Okay, and did you know Matthew Cobb from before?

19 A Yes, ma'am.

20 Q And how did you know Matthew Cobb?

21 A Because he used to be at my daddy girlfriend house,
22 well, baby's mother.

23 Q All right, and so, how did you meet up with, with Carter
24 and Cobb that day?

25 A At the, at the trailer beside the park on Prince

1 Street.

2 Q And whose trailer was that?

3 A I think that was his people's trailer who he stay
4 with.

5 Q And who is he?

6 A Rondell Carter.

7 Q Okay, and what did you all do that day?

8 A I gave, I gave them a ride to, I think, that's the guy
9 behind you, I gave them a ride to his house.

10 Q Okay, and did you pick up anybody else along the
11 way?

12 A Yes, ma'am, Junior Richardson. I ain't know his first
13 name.

14 Q Okay, and how did you know where to drive?

15 A He gave me directions.

16 Q And were you the one driving the whole time?

17 A Yes, ma'am.

18 Q And who was it who was giving you directions?

19 A Who was it that was giving me directions, Rondell
20 Carter.

21 Q Okay, and did you hear anything said by Mr. Carter about
22 why you all were going there?

23 A No, ma'am.

24 Q Did he say whose house it was?

25 A No, ma'am.

Herman McCray, Jr. - Direct by Ms. Bailey

234

1 Q Okay, and what, what do you remember from when you got
2 there?

3 A Where you want me to start?

4 Q Start at the beginning.

5 A When we first, when we first got there he was like

6 ---

7 Q Speak up into the microphone.

8 A When, when we first got there he was like, he was like
9 we can come in, he was like, "Daggone," I ain't got to sit in
10 the car. He said I could have come in, and ---

11 Q Who's he?

12 A Rondell Carter.

13 Q Okay, and then what?

14 A And all of us went, all of us went. He was saying
15 like, he was saying it like that guy right there had owe him
16 some money like he was working for the guy or something and
17 ---

18 Q That's what Carter said?

19 A Yes, ma'am.

20 Q Okay, and so, did you all go inside the house?

21 A Yes, ma'am.

22 Q All right, was anybody inside the house when you went
23 in?

24 A Yes, ma'am.

25 Q Who was there?

1 A It was a lady. I don't know her name.

2 Q White lady, black lady?

3 A White lady.

4 Q What color was her hair?

5 A Black.

6 Q Okay, short or long?

7 A Long.

8 Q Okay, and then what happened?

9 A He just told her she - well, when like when he walk in

10 she was like, I think she was sleeping or something. Then she

11 was like she got scared. Like she just jumped because it like

12 startled her and he just was asking her like where he was and

13 just telling her he been going to kill her.

14 Q Okay.

15 A Straight up.

16 Q Did you see any guns at that point?

17 A Yes, ma'am.

18 Q How many guns did you see?

19 A One.

20 Q What color was it?

21 A Black.

22 Q Do you know what kind of gun it was?

23 A I'm not sure exactly what kind of gun it was. I know it

24 was a Hi-Point.

25 Q Was it big or little?

Herman McCray, Jr. - Direct by Ms. Bailey

236

1 A Probably like that big.

2 MS. BAILEY: I'm showing Mr. McCray what's been
3 previously marked as State's Exhibit Number Four and it's been
4 locked for the courtroom.

5 BY MS. BAILEY:

6 Q Do you recognize that gun?

7 A Yes, ma'am.

8 Q Where do you recognize that gun from?

9 A That's the thing he was holding.

10 Q And when you say he who do you mean?

11 A Rondell Carter.

12 Q What did he do with the gun?

13 A He was pointing it at her ---

14 Q All right.

15 A --- and telling her, and telling her to get on the floor
16 and then call, call him.

17 Q Okay, did you all go around and do anything else in the
18 house, any of the bedrooms or anything?

19 A Yes, ma'am, he told, he told us, he was like, you know,
20 search the house, and I mean, shoot, I been scared. I just
21 did what he told me to do.

22 Q Okay.

23 A Honestly, I'm just ---

24 Q Did anybody have any - were you all covering your faces
25 or anything?

1 A Ma'am?

2 Q Were you covering your faces with anything?

3 A Yes, ma'am.

4 Q What were you covering your faces with?

5 A It was like a, with a like a bandanna.

6 Q Do you remember what color?

7 A No, ma'am.

8 Q Do you remember if it was light or dark?

9 A No, ma'am.

10 Q Okay, and how many of those bandannas were there that

11 you remember?

12 A I think it was two.

13 Q Okay, at some point did anybody else come home?

14 A Yes, ma'am.

15 Q Who came home?

16 A He came home.

17 Q All right, how many people were there?

18 A I think it was four.

19 Q All right, what do you remember happening when they came

20 home?

21 A He was like - just like, he just was like go hide and

22 ---

23 Q Who, who's he?

24 A Rondell Carter.

25 Q Okay.

Herman McCray, Jr. - Direct by Ms. Bailey

238

1 A When we hide I went and sit like in the chair like when
2 the guy came in like he just hold him at gunpoint and he had
3 make them take off all their clothes and make them strip like
4 - well, not lot all their clothes but stripped down to like
5 their underwear.

6 Q All right, and did he take anything from them that you
7 remember?

8 A No, ma'am.

9 Q Okay, and then did they all come in at the same
10 time?

11 A Yes, ma'am, I believe so.

12 Q Okay, and you said there was four of them. What did
13 they look like?

14 A It was, it was him, it was her and I think it was two
15 black people.

16 Q Okay.

17 MS. BAILEY: And if the record could reflect that he
18 was pointing to the two victims that were sitting in the
19 gallery.

20 A Yes, ma'am.

21 Q And did the black people stick around?

22 A You said did they stick?

23 Q The two black folks who came in, did they stick around?

24 A If I'm mistaken - you mean for that point and period in
25 time?

1 Q How long did they stay in the house?

2 A Probably for like a hour.

3 Q Okay.

4 A Probably for like a hour.

5 Q And why did they leave?

6 A Because he told them to take his truck and leave.

7 Q And who's he?

8 A Rondell Carter.

9 Q Okay, and did Rondell Carter make any statements about

10 what he wanted there?

11 A Yes, ma'am.

12 Q What did he say?

13 A He say he had want some money or he - somebody been

14 going to die.

15 Q All right, do you remember hearing any gunshots?

16 A Yes, ma'am.

17 Q When do you remember hearing gunshots?

18 A One time when he went outside and then the other time

19 when he told me go search the truck, he told me go search the

20 truck and I could have hear, I could have hear her screaming,

21 I could have hear her screaming. He had the gun in his hand

22 when I left out the house and I could have hear her screaming

23 and he must be, I think he hit her, I think he hit her in her

24 head or something.

25 Q Okay, only testify as to what you personally saw, okay.

Herman McCray - Direct by Ms. Bailey

240

- 1 Don't speculate. So, tell us what you saw with your own eyes.
- 2 A I saw him had the gun when I left out the house and when
- 3 I came back in the house he still had the gun.
- 4 Q Okay, and did she have an injury?
- 5 A Yes, ma'am.
- 6 Q Christina Carroll?
- 7 A Yes, ma'am.
- 8 Q Okay, and at some point in time did you observe a
- 9 gunshot wound on her?
- 10 A Yes, ma'am.
- 11 Q And when did you see that?
- 12 A When I came back in the house.
- 13 Q All right, what happened after, after that when you came
- 14 back in the house?
- 15 A She just - I just like went in and I just went, like
- 16 went into shock like I couldn't believe it because I never
- 17 witnessed nothing like that in my life and I just seen her
- 18 bleeding and stuff and I just was like, I don't know, it was
- 19 crazy. I was just like I just had my hand over my mouth
- 20 because I just, I just couldn't believe it.
- 21 Q All right, and what did you see? What happened next?
- 22 A He just was telling him to find some kind of way to get
- 23 some money.
- 24 Q And when you say he we need to use names here.
- 25 A Rondell Carter was telling Mr. - the victim that he

1 needed some money.

2 Q Okay, and was there any money? Did any money ever show
3 up?

4 A No, ma'am.

5 Q So, what happened next?

6 A He was just telling him like he couldn't, he couldn't
7 get no money, it was nighttime and like there wasn't no place
8 he could have gone get no money because it was nighttime.

9 Q Okay, you were there and you personally observed this.
10 Did you - were William Douglas and Christina Carroll, were
11 they free to leave the house?

12 A No, ma'am.

13 Q What happened next?

14 A What happened next, so many things. I'm just trying to
15 think. It was, it was like it was so long ago and like so
16 many, so many things happened like all kind of different - a
17 lot of different things.

18 Q Okay, at some point did you leave the house?

19 A Ma'am?

20 Q Did you leave the house at some point?

21 A You said did I leave the house at some point, yes,
22 ma'am.

23 Q Okay, and where did you go?

24 A To Andrews.

25 Q And why did you go there?

Herman McCray - Direct by Ms. Bailey

242

- 1 A To take the items that was in the house to Junior
2 Richardson's house.
- 3 Q Okay, and did you return back to the house?
- 4 A Yes, ma'am.
- 5 Q To Mossdale Drive?
- 6 A Yes, ma'am.
- 7 Q Okay, was - did you ever leave the house with Jamie or
8 with the dark-haired lady?
- 9 A No, ma'am.
- 10 Q Okay, and what - when you came back to the house what's
11 the next thing that you remember?
- 12 A When I came back to the house like I remember - what
13 time - I think she had like something tied on her. Then she -
14 --
- 15 Q And when you say she, which lady? Let the record
16 reflect that he's pointing to Christina Carroll.
- 17 A I think she had like something tied on her to stop her,
18 stop her wounds from bleeding.
- 19 Q Okay, and what happened next?
- 20 A He just told us that we was spending the night.
- 21 Q All right, what happened then?
- 22 A And I think he had, I think he, I think he had roll up
23 some marijuana.
- 24 Q All right, stop right there.
- 25 A Okay.

1 Q At some point what - at some point did Rondell Carter
2 leave the house?

3 A I think that next morning.

4 Q All right, and do you know why he left the house?

5 A No, ma'am. When I woke up the next morning because like
6 that night like when he said we was spending the night I just
7 been scared and I just walk in the room and sit down in a
8 corner and put my arms over my legs and just ball up and I
9 just like sit up the whole night in there and probably like a
10 hour before daylight I probably fell asleep for like a hour
11 and then when I woke up I remember when I came outside, when I
12 - well, when I came out of the, out of the room Matthew Cobb
13 he was sitting down and I asked him, I asked him where he was
14 at and he said that ---

15 Q All right, stop, don't, don't say what Matthew Cobb
16 said. That's, that's hearsay.

17 A Yes, ma'am.

18 Q Just tell us who was in the house when you woke up when
19 you came out of the house - out of the bedroom?

20 A She was there and the lady with the black hair and me
21 and Matthew Cobb.

22 Q Okay, and how long were you all there just the four of
23 you?

24 A Probably for like, probably for like a hour, two hours.

25 Q Okay, and what happened - why did you all leave?

Herman McCray - Direct by Ms. Bailey

244

1 A We was sitting on the floor in the house and I heard, I
2 heard, I heard, I heard the police department - the sheriff
3 department say, "This is the Georgetown County Sheriff
4 Department."

5 Q Okay, and so then what happened once you heard them?

6 A Ma'am?

7 Q What happened after you heard that the sheriff's
8 department was there?

9 A I just was so scared I thought they was just going to
10 come in shooting and I went in the room and I just hide under
11 the mattress.

12 Q Okay, did you ---

13 MS. BAILEY: I'm going to beg the Court's indulgence
14 for just a moment.

15 THE COURT: All right.

16 BY MS. BAILEY:

17 Q Were you charged with crimes in conjunction with this
18 case?

19 A Yes, ma'am.

20 Q Did you enter into any kind of agreement with the State?

21 A No, ma'am.

22 Q Did you plead guilty on Monday?

23 A Did I plead guilty?

24 Q Or I'm sorry not Monday, did you plead guilty earlier
25 today?

1 A Yes, ma'am.

2 Q And what did you plead guilty to?

3 A Burglary second.

4 Q Okay, and was that done under an agreement with me?

5 A You say was that done under an agreement with you?

6 Q Uh-huh.

7 A No, ma'am.

8 Q Okay, was - why are you testifying here today?

9 A To prove my innocence.

10 Q No further questions.

11 THE COURT: All right, Mr. Felts, cross examination.

12 MR. FELTS: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. FELTS:

15 Q Good afternoon, Mr. McCray.

16 A Good afternoon.

17 Q Now, you - the solicitor just asked you if you pled

18 guilty. You said yes, you pled guilty to burglary second this

19 morning; correct?

20 A Yes, sir.

21 Q And you are, in fact, a Co-Defendant to my client?

22 A Yes, sir.

23 Q And you pled guilty because you said to prove your

24 innocence but you really pled guilty because you're getting a

25 deal to testify against my client?

Herman McCray - Cross by Mr. Felts

246

1 A No, sir, I didn't receive a deal to testify against him.

2 Q Well, sure you did. You got a deal to testify against
3 my client. You signed a proffer agreement. The agreement
4 says you're going to testify against my client and they're
5 going to give you a deal afterwards. That's exactly what you
6 did.

7 MS. BAILEY: Your Honor, is there a question in this or
8 he just arguing with the witness?

9 A No, sir.

10 THE COURT: Yeah, ask a question.

11 Q You signed a proffer agreement to testify today;
12 correct?

13 A Sir, you said I signed a proffer agreement to testify?

14 Q Yes, that was my question.

15 A No, sir, I was going to testify from the beginning.

16 MR. FELTS: Your Honor, may I approach the witness?

17 THE COURT: Yes, sir.

18 BY MR. FELTS:

19 Q Is your lawyer Herman, excuse me, Cezar McKnight from
20 Lake City?

21 A Yes, sir.

22 Q And Cezar McKnight pled you guilty on the burglary this
23 morning; correct?

24 A Yes, sir.

25 Q Okay, well, what I handed you that's a letter to you;

1 correct, or to your lawyer, excuse me?

2 A Yes, sir.

3 Q And in that letter it says that you're going to testify
4 for the State; correct? So you agree with me this is a, this
5 is a proffer letter from the State that tells you that you're
6 going to testify for them in exchange for a deal?

7 A But I suggested to testify for them.

8 Q You - and you signed it right here, Herman Eleton
9 McCray, Jr. That's you; isn't it?

10 A Yes, sir.

11 Q And then Cezar McKnight signed it right there, attorney
12 for Defendant?

13 A Yes, sir.

14 Q Herman McCray, Jr., dated 12-12 - no, excuse me,
15 it's upside down, 12-21-2010, December of 2010; is that
16 correct?

17 A Yes, sir.

18 Q Thank you very much. Now, you're testifying for the
19 State against my client; correct?

20 A Yes, sir.

21 Q And you, you testified on direct exam when Ms. Bailey
22 was asking you questions that you are friends with Matthew
23 Cobb?

24 A You say am I friends with him?

25 Q You are friends with him; correct?

Herman McCray - Cross by Mr. Felts

248

1 A I know of him but we're not friends.

2 Q Now, you gave a statement to the police in this matter
3 on a couple of occasions; correct?

4 A Yes, sir.

5 Q And you told the police officers right after this
6 incident right after you got arrested that Ms. Carroll got
7 shot and you didn't see who did it?

8 A I told her that she got shot and I didn't see who did
9 it?

10 Q Yes.

11 A That's correct. I didn't see who did it but I saw who
12 was holding the gun when I left out the house and who was
13 holding the gun when I came back in the house.

14 Q You also told them there was only three people there,
15 too?

16 A Three people?

17 Q Yes.

18 A My mind may be had was messed up at the time from what I
19 witnessed.

20 Q Now, you're in a gang, aren't you, Mr. McCray?

21 A No, sir.

22 MS. BAILEY: Objection, Your Honor, I don't know what
23 the relevance of that would be.

24 THE COURT: What's the relevancy?

25 MR. FELTS: It's credibility, Your Honor, it's

1 impeachment.

2 MS. BAILEY: I don't know how being in a gang makes him
3 more or less truthful if it's even true.

4 THE COURT: I'm going to allow it. It's cross
5 examination. Go ahead.

6 MS. BAILEY: Thank you, Your Honor.

7 BY MR. FELTS:

8 Q You're in a gang; aren't you?

9 A No, sir.

10 Q You're not in the Folks Nation gang?

11 A No, sir.

12 Q You all don't have certain colors or anything like that?

13 MS. BAILEY: Objection, Your Honor. He's already
14 answered that he's not in a gang.

15 THE COURT: Sustained.

16 Q Now, you also told the cops that you left the house with
17 Jamie at some point in time during the night. You told the
18 cops that; didn't you?

19 A No, sir.

20 Q Now today you said that you didn't leave?

21 A I never left the house with her.

22 Q You testified a little bit ago that this has been a long
23 time, you don't remember a lot of stuff? You ---

24 A It's been a long time ago. I can't remember every exact
25 detail down to the T but I know what I saw. I know what I

Herman McCray - Cross by Mr. Felts

250

1 witnessed.

2 Q And you were willing to tell all that in exchange for a
3 deal from the State; right?

4 A I didn't need a deal from the State because I was going
5 to tell it regardless.

6 MR. FELTS: That's all I got, Your Honor. Thank you.

7 THE COURT: All right, redirect?

8 MS. BAILEY: No redirect, Your Honor.

9 THE COURT: All right, you may step down.

10 MS. BAILEY: Your Honor, the State would request that
11 Mr. McCray be released - well, released from his subpoena.

12 THE COURT: Any objection?

13 MR. FELTS: Yes, sir, we object to that.

14 THE COURT: All right, we'll hold him under his
15 subpoena, then.

16 All right, let me see the attorneys for a second.

17 (Whereupon, a bench conference is held in the presence
18 but out of the hearing of the jury.)

19 THE COURT: All right, ladies and gentlemen, it's
20 about 10 till five. So, it's a good time for us to go ahead
21 and break for the evening today. I'm going to excuse you to
22 go home for the evening. I caution you again don't discuss
23 the case with anyone even among yourselves at this point in
24 time. It's still too early for deliberations. Don't try to
25 conduct any independent investigations. Don't go looking in

1 the newspaper or listen to any news accounts about the case.
2 I hope everyone has a good evening. Now, having said that we
3 are progressing about where we expected to on this trial. If
4 we are going to go late for an evening it would probably be
5 tomorrow and then possibly Thursday. Now, I'm not going to go
6 very late but you should make arrangements in case we need to
7 stay till say six or 6:30 tomorrow. So, if you need - I'm not
8 saying we'll stay that late but you need to be prepared to
9 stay usually till about six tomorrow if we need to. If we
10 don't need to we won't but if you have to make arrangements to
11 pick someone up or to take care of some children or something
12 like that please go ahead and make those arrangements just in
13 case we go a little bit later tomorrow evening. I'm going to
14 ask that you be back in the jury room at 9:15 tomorrow morning
15 and we'll try to get started hopefully about 9:30 if we can.
16 Hopefully, they'll have some coffee or something for you for
17 tomorrow morning. So, please be back in the jury room at
18 9:15. I hope everyone has a good evening and we'll see you
19 back tomorrow morning. Everyone else please remain seated
20 while the jury's excused.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, anything from the State before
24 we recess for the evening?

25 MS. BAILEY: No, Your Honor.

State v. Carter

252

1 THE COURT: Anything from the Defense?

2 MR. FELTS: No, sir, Your Honor.

3 THE COURT: All right, we'll stand in recess until - I
4 want to try to take the bench at 9:30 but I'll be here
5 certainly before that but I'll take the bench at 9:30 tomorrow
6 morning; okay?

7 MS. BAILEY: Thank you.

8 THE COURT: All right.

9 MR. FELTS: Thank you, Judge.

10 THE COURT: All right, thank you very much.

11 OFF THE RECORD

12 (On the record.)

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right, who are we - we're back on the
16 record in the case. Let's hold it down for a second. Who are
17 we releasing from subpoenas now?

18 MR. FELTS: Judge, we don't object to releasing
19 William Douglas, Christina Carroll, Rosa Milton or Thermond
20 Seward from their subpoenas.

21 THE COURT: All right, is it the State's subpoenas or
22 is it Defense's?

23 MS. BAILEY: They're State subpoenas.

24 THE COURT: And do you want to release them from those
25 subpoenas?

1 MS. BAILEY: Yes, Your Honor.

2 THE COURT: All right, they're free to go. Thank you
3 very much.

4 MS. BAILEY: Thank you.

5 MR. FELTS: Thank you.

6 THE COURT: All right, anything else we need before we
7 recess?

8 MS. BAILEY: Nothing from the State.

9 THE COURT: Anything from Defense?

10 MR. FELTS: Nothing from the Defense, Your Honor.
11 Thanks.

12 THE COURT: All right, good.

13 OFF THE RECORD

14 (On the record, Wednesday, June 29, 2011.)

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right, anything from the State before
18 we bring the jury in?

19 MS. BAILEY: No, Your Honor.

20 THE COURT: Anything from Defense?

21 MR. FELTS: No, sir, Your Honor.

22 THE COURT: All right, let's go ahead and bring the
23 jury in.

24 (Whereupon, the following takes place in the presence of
25 the jury.)

Christopher Geno - Direct by Ms. Bailey

254

1 THE COURT: All right, ladies and gentlemen, welcome
2 back. I hope everyone had a good restful evening. We're now
3 ready to resume the trial of the case of the State of South
4 Carolina versus Rondell Leon Carter. All right, Ms. Bailey,
5 you can call your next witness.

6 MS. BAILEY: Thank you, Your Honor, the State calls
7 Chris Howard, I'm sorry, Chris Geno.

8 THE COURT: While he's taking the stand I want to take
9 this opportunity to remind everyone if you have any cell
10 phones or pager devices or anything of that nature if you'd
11 please turn them off at this time. Thank you very much.

12 Whereupon, Chris Geno was called to the stand, duly sworn
13 by the clerk and testified as follows:

14 THE CLERK: Thank you. Please be seated and state
15 your name for the record.

16 MR. GENO: Sergeant Christopher Geno.

17 DIRECT EXAMINATION

18 BY MS. BAILEY:

19 Q Thank you, could you spell your last name for the
20 record?

21 A G-E-N-O.

22 Q Thank you, and did you have a reason to respond to
23 Mossdale Drive on January 24th of 2009?

24 A Yes, I did.

25 Q And what brought you out there?

1 A We had actually received - we were had at a training
2 exercise that day and right at the end of that while we were
3 debriefing we got a call about a possible hostage situation at
4 the time out at Mossdale Lane which wasn't too far from where
5 we were at.

6 Q In what capacity did you go out to that?

7 A I was a SWAT team team member.

8 Q And I'm going to show you what has been previously
9 marked as State's Exhibit Number One. It should be popping up
10 on your screen.

11 All right, once you arrived on the scene can you explain
12 what took place?

13 A Once we arrived on scene we actually stopped well short
14 of the house, waited for everybody to get there, came up with
15 a plan of action, and once we went ahead and put that plan
16 into motion we drove my Tahoe up to the scene, stopped short,
17 you get towards the end of the road and it kind of opens up to
18 this yard where this house is located and I on the PA of the
19 car I actually made several announcements, you know, "This is
20 the sheriff's office, SWAT team, come out of the house with
21 your hands up," you know, and tried to come to a peaceful
22 resolution. At that point we got no response. There was some
23 investigators I think that were on the perimeter around the
24 outside watching the house in case somebody did try to escape.
25 At that point we were told that they saw some maybe a curtain

Christopher Geno - Direct by Ms. Bailey

256

1 move. I don't - it was some movement in one of the windows.
2 After we got no response from anybody in the house we went
3 ahead and moved up closer towards this front corner of the
4 house with the Tahoe. We drove, the SWAT members were stacked
5 up on the side, you know, putting the car between them and the
6 house in case any shots were fired.

7 Q When you say the front corner, do you mean the one near
8 the grill, could you be more specific?

9 A That's correct. This, looking at this picture, to the
10 left of the picture there's a side porch and to the front
11 there's a - looks like a screened-in, well, not a screened-in
12 but maybe like a sunroom, but it was actually like a porch and
13 that was actually coming down the road that would've been the
14 rear part of the house and there's a river just beyond that,
15 but we did come up towards this part of the house. When we
16 arrived at that part of the house a female came out of that
17 porch area and was, was injured on her leg, and there's -
18 either her face or her head there was - but she had an injury
19 and myself and Sergeant Bardon went to her and aided her back
20 to the Tahoe to get her out of harms way and then to an
21 ambulance from that point.

22 Q And do you see that lady that came out of the house in
23 the courtroom today?

24 A Yes, I do.

25 Q And could you identify her?

1 A She's right there.

2 Q Okay.

3 MS. BAILEY: Could the record reflect that he's
4 pointing to the victim, Ms. Christina Carroll.

5 BY MS. BAILEY:

6 Q And what was her demeanor when she came out of the
7 house?

8 A She was injured, afraid, like excited afraid. I don't
9 know really how to word it but she was glad to be out of the
10 house and out of harms way but - and she was injured. Like I
11 said, and too, and it looked like, I don't remember which leg
12 it was but it looked like she had tried to actually, you know,
13 bandage it or somehow stop the bleed. I don't remember
14 exactly how it was.

15 Q What was she doing with her hands? Do you remember
16 that?

17 A Well, when she, she showed us her hands were empty when
18 she came out of the house. Like when we were making the
19 announcements we do want to see empty hands because if there's
20 nothing in their hands they can't hurt us. So, she - you
21 know, she didn't come out when we first asked her to but when
22 we got there maybe she seen, I don't know, but she came out
23 and showed us that she did have empty hands.

24 Q And was she ambulatory? Was she able to walk up, right
25 up to you or how ---

Christopher Geno - Direct by Ms. Bailey

258

1 A No, we went to her. She was limping pretty good, and
2 just because of the nature of the call and not knowing, you
3 know, what was going on at the house at the time because we
4 went to her and got her out of the way quickly so we could go
5 ahead and make our own entry into the house.

6 Q And what's the next thing that you remember?

7 A We took her to the ambulance. Once we got her to the
8 ambulance we left, and at that time we were making an entry,
9 made our dynamic entry into the house to secure any other
10 witnesses, defend - or bad guys, suspects or any other victims
11 that were in the house.

12 Q And who all did you find in the house?

13 A There was another victim.

14 Q And what did she look like? Was she white or black?

15 A A white lady I believe. I didn't have any interactions
16 with her but they did bring her out. So, I saw another victim
17 in the house and then the two suspects.

18 Q And did you have any direct interaction with any of the
19 suspects in the house?

20 A Herman McCray ---

21 Q Okay.

22 A --- I did.

23 Q And what - where did you find him?

24 A He was in a bedroom trying to hide in a box when we got
25 in the house. We went into the side door on the porch that

1 you saw is where we actually made our entry and when you - we
2 do an entry you pretty much in pairs are going to go into
3 different rooms and clear them looking for suspects and he
4 was trying to hide in a box which was fairly obvious to us.
5 So, we got our hands on him, handcuffed him and brought him
6 back outside of the house.

7 Q Were there any other suspects that you located inside
8 the house?

9 A Not that I located, no, but the other SWAT team members
10 located one other person.

11 Q All right.

12 MS. BAILEY: I have no further questions for this
13 officer.

14 THE COURT: All right, Mr. Felts.

15 CROSS EXAMINATION

16 BY MR. FELTS:

17 Q Agent Geno, good morning, I mean, Sergeant Geno. Sorry
18 about that. You used to be an agent when you were with
19 narcotics?

20 A Yes, sir.

21 Q You, you guys did a dynamic entry. So, you went in the
22 house; correct?

23 A That's correct.

24 Q And inside the house do you recall seeing crack pipes
25 and perhaps unrolled cigars, marijuana, I guess, residue

Christopher Geno - Cross by Mr. Felts

260

1 around? Do you recall seeing any of that?

2 A I don't recall residue but I want to say I remember
3 seeing a broken crack pipe in there.

4 Q And some copper shavings or whatever around the broken
5 crack pipe or something to that effect, that that's ---

6 A I don't remember exactly. It may not have even been
7 broken but I want to say I did see a broken crack pipe in
8 there.

9 Q And Rondell Carter wasn't in there when you got there;
10 was he?

11 A No, he was not.

12 Q Only I believe Herman McCray and you said there was
13 another suspect. You took Herman McCray into custody?

14 A That's correct.

15 Q And then the other suspect was Matthew Cobb; is that
16 correct?

17 A I believe so. I didn't have any interactions with him.

18 Q Thank you, Sergeant.

19 MR. FELTS: No further questions.

20 THE COURT: Redirect?

21 MS. BAILEY: None, Your Honor.

22 THE COURT: You may step down.

23 A Thank you, Judge.

24 THE COURT: Thank you.

25 MS. BAILEY: I would request that Sergeant Geno be

1 released from his subpoena at this time.

2 THE COURT: Any objections?

3 MR. FELTS: No, sir, Your Honor.

4 THE COURT: All right, you're free to go. Thank you
5 very much.

6 A Thank you.

7 THE COURT: Call your next witness.

8 MS. BAILEY: Thank you, Your Honor. The State calls
9 Robbie Owens.

10 THE COURT: All right.

11 Whereupon, Robert Owens is called to the stand, duly
12 sworn by the clerk and testified as follows:

13 THE CLERK: Thank you. Please be seated and state
14 your name for the record.

15 MR. OWENS: Robert Gerald Owens.

16 THE COURT: Thank you, Mr. Owens. All right, Ms.
17 Bailey.

18 DIRECT EXAMINATION

19 BY MS. BAILEY:

20 Q Mr. Owens, what's your job?

21 A I'm 911 communications manager.

22 Q And what does that job entail?

23 A Record-keeping, making tapes, handling personnel issues,
24 payroll.

25 Q Okay, I'm going to hand up to you what has been

Robert Owens - Direct by Ms. Bailey

262

1 previously marked as State's Exhibit Number 38 for
2 identification only. Have you had a chance to review this?
3 A Yes, ma'am, I have.
4 Q Is it a CD?
5 A Yes, it is.
6 Q Okay, and what's on there, on that CD did you, did you
7 produce that to the solicitor's office or to the investigators
8 at the sheriff's department?
9 A Yes, I did.
10 Q Okay, and is that a record that is kept in the normal
11 course of business?
12 A Yes, ma'am, it is.
13 Q All right.
14 MS. BAILEY: At this time the State would request that
15 the 911 call be introduced as evidence and have permission to
16 publish it to the jury as a business record.
17 THE COURT: All right, any objection?
18 MR. FELTS: Your Honor, if counsel and I could
19 approach briefly?
20 THE COURT: All right.
21 (Whereupon, a bench conference is held in the presence
22 but out of the hearing of the jury.)
23 THE COURT: All right, I'll go ahead and admit
24 Plaintiff's - excuse me, State's Exhibit Number 38 is admitted
25 into evidence. I'm going to put over Defendant's objection.

1 All right, go ahead.

2 (Whereupon, State's Exhibit Number 38 admitted into
3 evidence and appropriately marked. See index for description
4 of exhibit.)

5 MS. BAILEY: Permission to publish to the jury?

6 THE COURT: Yes, ma'am, go ahead.

7 (Whereupon, State's Exhibit Number 38 played in open
8 court.)

9 MS. BAILEY: I have no further questions for this
10 witness.

11 THE COURT: All right, Mr. Phelps, cross examination.

12 MR. FELTS: No questions for this witness, Your Honor.
13 Thank you.

14 THE COURT: All right, you may step down. Thank you
15 very much.

16 MS. BAILEY: Your Honor, may Mr. Owens be released from
17 his subpoena?

18 THE COURT: Any objection?

19 MR. FELTS: No, sir, Your Honor.

20 THE COURT: All right, you're free to go. Thank you
21 very much. All right, you can call your next witness.

22 MS. BAILEY: Thank you, Your Honor. The State calls
23 Jared Bardon.

24 THE COURT: All right.

25 Whereupon, Jared Bardon was called to the stand, duly

Jared Bardon - Direct by Ms. Bailey

264

1 sworn by the clerk and testified as follows:

2 THE CLERK: Thank you. Please be seated and state
3 your whole name for the record, please, spelling it.

4 MR. BARDON: I'm Sergeant Jared Bardon.

5 DIRECT EXAMINATION

6 BY MS. BAILEY:

7 Q Could you spell your last name, please?

8 A Yes, ma'am, B-A-R-D-O-N.

9 Q And how did you get involved in the case, this case?

10 A On January 24 of 2009 I was called to the 521 mini-mart.
11 That's in Georgetown on Highmarket Street, in reference to
12 somebody possibly being held hostage.

13 Q Okay, and what did you do from there?

14 A I left from the sheriff's office and the dispatcher
15 relayed information that she was told by the caller that ---

16 MR. FELTS: Objection, hearsay.

17 THE COURT: No, it's not for the truth of the matter,
18 it's to explain his actions. So, I'm going to go ahead and
19 allow that.

20 MS. BAILEY: Thank you, Your Honor.

21 BY MS. BAILEY:

22 Q Continue.

23 A The dispatcher advised that she received information from
24 the caller that a gentleman was in the store being held
25 hostage, that there was a white gentleman saying that he was -

1 he was accompanied by a black gentleman and there was
2 something going on. He told the clerk something and that they
3 were getting ready to leave the store. The dispatcher said
4 that the two gentleman got into a - it was a silver Toyota
5 truck and left towards Andrews. I almost made it to the store
6 before they left and there was Deputy Crabtree was in front of
7 me and as, as we were going toward the store we could barely
8 see that silver truck, what appeared to be a silver truck at
9 Nine Mile Curve. That's right there at 17 Alternate and
10 Highmarket Street, and I got in front of Deputy Crabtree. I
11 don't think we had a tag at the time of the vehicle, but it
12 was, I mean, matched the vehicle. So, we went ahead and I
13 initiated a traffic stop. Well, because of what the
14 dispatcher relayed and the type of situation we decided to
15 perform a felony traffic stop. That's where we get out of our
16 cars with the guns drawn just to make sure, you know, in case
17 somebody has a weapon, and as soon as that truck pulls over
18 the, the white, the white gentleman who was in the passenger
19 seat he starts running back toward our vehicles.

20 Q And I'm going to stop you right there. Do you see that
21 white gentleman in the courtroom today?

22 A Yes, ma'am.

23 Q And could you point to him?

24 A He's right there right behind you.

25 MS. BAILEY: And let the record reflect that he's

Jared Bardon - Direct by Ms. Bailey

266

1 pointing to the victim William Douglas.

2 BY MS. BAILEY:

3 Q Okay, continue.

4 A So, I mean, he, he starts running, it's like he's
5 really, really scared and starts running back toward the
6 vehicle. So, Deputy Crabtree goes around to the other side of
7 the car. He actually orders him to the ground with his gun
8 drawn because like I said we really don't know what was going
9 on.

10 Q And what was the demeanor of Mr. Douglas?

11 A He looked like he was scared to death, I mean, he was.

12 Q Was he acting - how was he acting?

13 A I mean like he was really, really happy for us to be
14 there, like he just, I mean.

15 Q Was he under the stress of the situation?

16 A I would definitely say so. I mean, he was somebody
17 looked like he was, I mean, running for his life when he got
18 out of the car, I mean.

19 Q Okay, and did he make any statements at that time?

20 A I mean, at that time I didn't talk to him until, you
21 know, I wasn't - I got out with the suspect.

22 Q Okay.

23 A Deputy Crabtree handcuffed Mr. Douglas, you know, like I
24 said we didn't know who was the victim or what was going on.
25 He puts him in the back of the patrol car and I focus on the

1 driver.

2 Q And who was the driver of the car?

3 A He was identified as Mr. Rondell Carter.

4 Q And is he in the courtroom today?

5 A Yes.

6 Q And where is he?

7 A At the defense table beside the attorney.

8 Q All right.

9 A And whenever I felony traffic stop, you know, I got him
10 out of the vehicle at gunpoint. He, he does exactly what I
11 tell him to. He gets out of the car with his hands up. I
12 told him to go straight to the ground. He goes straight to
13 the ground. I approach real slow and place the handcuffs on
14 him at which point I started searching him for weapons. I
15 check his waistband. I check his - around his ankles and
16 everything. I didn't find anything. So, I detained him in
17 handcuffs. I tell him we're investigating something, a
18 possible hostage situation. I told him about the call. I put
19 him back in the car.

20 Q And then what happened?

21 A Once we have both people in the back of the car we knew
22 everything was safe and we had them detained. I went and
23 talked to Mr. Douglas first.

24 Q Okay.

25 A I asked him what happened. I said, you know, I told him

Jared Bardon - Direct by Ms. Bailey

268

1 about the call, what was going on. I mean, he was really
2 upset and it was kind of hard to talk, I mean, he was kind of
3 hard to get anything out of him because, I mean, he was - you
4 could tell he was, you know, breathing hard. I mean, he was
5 scared. So, he said that ---

6 MR. FELTS: Objection to hearsay.

7 THE COURT: Sustained.

8 MS. BAILEY: Your Honor, I've laid the foundation for
9 an excited utterance.

10 THE COURT: No, I'm going to sustain it. I sustain
11 the objection, hearsay.

12 MS. BAILEY: Okay.

13 BY MS. BAILEY:

14 Q Was, was the victim acting in an agitated or excited
15 manner?

16 A Yeah, very much so.

17 Q Okay, and how so? Why would you, why would you say
18 that?

19 MR. FELTS: Objection, speculation.

20 Q What did you observe?

21 THE COURT: Sustained.

22 MS. BAILEY: Can I rephrase? What ---

23 THE COURT: Yeah, rephrase your question.

24 BY MS. BAILEY:

25 Q What did you observe in his mannerisms that made you

1 think that he was acting in an excited or agitated manner?

2 A Well, the fact that the police show up, he goes running
3 back to the vehicles toward law enforcement out of way. He
4 was breathing real heavy, sweating, just appeared to be
5 somebody who was, I mean, really, really scared.

6 Q Okay, and so, then what did he say to you?

7 MR. FELTS: Objection, hearsay.

8 THE COURT: Sustained.

9 Q Okay, what happened next?

10 A I went and talked to Mr. Carter in the back of the
11 vehicle.

12 Q All right, and then what happened?

13 A He was - after, after I got his side of the story of
14 what was going on, at the time we were going to the - at that
15 point based on the stories I got from both people we were
16 going to start an investigation.

17 Q Okay, were those - without telling us what Mr. Douglas
18 said were those stories different?

19 A Very different.

20 Q Okay, and what was Mr. Carter's story at the time?

21 A I explained to Mr. Carter why he was in the back of the
22 patrol car. I explained to him why we stopped the vehicles.
23 I - at - I told him, you know, why he was there. He said that
24 he didn't know why he was getting stopped. He said that they
25 were friends and he wasn't sure what was going on, whatever he

Jared Bardon - Direct by Ms. Bailey

270

1 said that - whatever Mr. Douglas said wasn't true. I advised
2 him I said, "Well, I mean, it's been said," and he needs to,
3 you know, obviously we're going to investigate.

4 Q Okay.

5 A I told him, I said, "As of right now," I said, "You're
6 driving a vehicle without a license," because he didn't have a
7 driver's license. I said, "You're being charged for driving
8 without a South Carolina driver's license," I told him, you
9 know, he was under arrest for that violation.

10 Q All right, and then what happened?

11 A From there me and several other deputies went back to
12 521 mini-mart. He was in the back of the car. He never got
13 out. We stopped. They went in to talk to the clerk about
14 everything and from there I took him to jail, to the detention
15 center on Highway 51.

16 Q You took Carter to the detention center?

17 A Yes, ma'am.

18 Q Okay, and what happened at the detention center?

19 A We take him out of the car and walk him into the booking
20 room ---

21 MR. FELTS: Objection, irrelevant.

22 MS. BAILEY: Your Honor, there's - I'm laying the
23 foundation for some statements.

24 THE COURT: I'm going to allow it right now. Go
25 ahead.

1 A I get out of the, we take him out of the car, put him
2 into the booking room..

3 Q At this, at this point it's for what?

4 A This is for - he does not have a driver's license. He
5 was driving a vehicle, that's, that's the only charge, just
6 driving without a license.

7 Q Okay.

8 A I explained to him, I said, "Hey, the fine on your - on
9 this charge is 200 and," at the time I think it was \$237. I
10 says, "We have a cash and dash thing at the jail which means
11 if you pay the money you can get out." Well, then his
12 demeanor changed ---

13 MR. FELTS: Objection to relevance.

14 MS. BAILEY: Your Honor, the ---

15 THE COURT: Overruled. Go ahead.

16 MS. BAILEY: Thank you.

17 A His demeanor changed and he started kind of, he started
18 kind of getting really antsy about talking on the phone. He
19 said, "I need to make a phone call right now, I need, and you
20 know, I need, I need to get out of here right now. I need to
21 make a phone call, "and I say, "About the money?" "Yep, I
22 need to get the money to get something, something here right,
23 you know, right now to get me out." Well, you know, and to me
24 that seemed really strange, I mean, because usually people
25 it's not a big deal to get out and somebody bring the money.

Jared Bardon - Direct by Ms. Bailey

272

1 I've never seen somebody just hustle, I mean, he just got
2 really, really nervous about that time and like he was really
3 wanting to get out of jail. I mean, I haven't really seen
4 that before based on that charge.

5 Q Okay.

6 A So, I found that strange.

7 Q And then what happened?

8 A From there, like I said, they booked him in and I called
9 my supervisor. They were already, you know, they were still
10 at the gas station, at 521 mini-mart, and I told him that, you
11 know, I says Mr. Carter was in jail and I said, "We need to
12 make a few phone calls," I said, "get the SWAT team together
13 and we need to go to the address that Mr. Douglas told us," I
14 said, "because we need to obviously see, you know, if this is
15 a real thing, if and what's going on."

16 Q Okay, and then what happened? Where did you go next?

17 A I went Rose Hill Road and Mossdale. It was Mossdale
18 Drive. It's the house that Mr. Douglas lived in. It's Rose
19 Hill - Mossdale runs off Rose Hill. I met with the SWAT team.
20 I met with some members of our command staff, like the
21 assistant sheriff.

22 Q Was this before or after the SWAT team went in?

23 A This is before.

24 Q Okay.

25 A We all - I told him, I said, "Hey, I'm the one that made

1 contact with these guys." I said, you know, "Here's - Mr.
2 Douglas told me this story about what's going on at his
3 house." I says, "The guy who was driving the car he's in jail
4 for no license," and I said, I told them, you know, what the
5 situation was, I said, you know, "We need to, we need to go up
6 there. We need to take full force because it might be
7 serious."

8 Q All right, and then when you got to the Mossdale Drive
9 house what do you remember?

10 A We, we decided to go in real tactical, you know, because
11 we didn't know what these people allegedly had in the house.
12 I was with the SWAT team. The SWAT team and me were - we
13 walked up to the house. We had a Tahoe we were - they were
14 kind of driving. We were kind of behind the Tahoe in case,
15 you know, somebody was shooting at us, and once we got on -
16 once we got in front of the house the guy driving the Tahoe,
17 who was Sergeant Geno, he said, he got on the PA and said, you
18 know, this is ---

19 MR. FELTS: Objection, this is hearsay.

20 MS. BAILEY: He's already been subject to cross
21 examination on those statements, Your Honor.

22 THE COURT: Yeah, but I'm going to sustain the
23 objection. Go ahead.

24 BY MS. BAILEY:

25 Q Okay, move on. We don't need to talk about what Geno

Jared Bardon - Direct by Ms. Bailey

274

1 said. He's already testified as to that. So, what happened
2 next?

3 A They were ordered on PA to come out the house.

4 Q Okay.

5 A We as the sheriff's office made an announcement, "We're
6 the Sheriff's Office, if there's anybody in that house come
7 out." Didn't, didn't hear anything for a while. We already
8 set up a perimeter around the house, it was investigators and
9 deputies like me, you know, were around the house to make sure
10 nobody left and shortly after that the door opened. A white
11 female walks out.

12 Q Now, let's back up for just a minute. Before that did
13 you observe anything happening in the yard?

14 A There was a - it was, it was weird because there was
15 this - right after he made, you know, we made the comment,
16 "Come out of the house," I look over and there was like this,
17 it looked like a brand-new car. It was sitting kind of in the
18 driveway off to the side, and I see these - the lights on it
19 like you're unlocking your car, the lights do that. I saw
20 that happen. I thought that was really strange and that kind
21 of made me scared because I said, "Well, somebody going to run
22 to the car? I mean, do we need to move or something," and
23 after that it was a short time later that this white female
24 walks out the house.

25 Q And do you see that white female that walked out of the

1 house first? Is she here in the courtroom?

2 A Yes, ma'am.

3 Q And where is she?

4 A She's right behind you right there with the brown hair.

5 Q Okay.

6 MS. BAILEY: And let the record reflect that he's
7 pointing to the victim Ms. Christina Carroll.

8 BY MS. BAILEY:

9 Q And what happened then?

10 A Well, she came walking out - well, she came walking out
11 of the house and I - she was - had this nasty gash on her
12 head. I mean, it looked really bad and she had a what looked
13 like a gunshot wound in her leg; and so, me and another guy
14 she gets far enough out of the house to where we feel safe.
15 We went and actually grabbed her and helped her behind one of
16 our SWAT vehicles.

17 Q Okay.

18 MS. BAILEY: I have no further questions for this
19 officer.

20 THE COURT: All right, Mr. Felts.

21 CROSS EXAMINATION

22 BY MR. FELTS:

23 Q Good morning, Sergeant.

24 A Good morning.

25 Q So, you, you pulled over this Toyota pickup truck that

Jared Bardon - Cross by Mr. Felts

276

1 my client was driving and then Mr. Douglas was in the
2 passenger side.

3 A Yes.

4 Q You testified to that. He pulled right over; didn't he?

5 A Yes.

6 Q Didn't run from you, didn't do anything like that.

7 A No.

8 Q And when you got Mr. Carter out of the car he didn't
9 have a weapon on him. You searched him, whatever, no weapon,
10 no gun, no nothing.

11 A There was no weapon on him. There was no weapon in the
12 truck.

13 Q And you just testified that there were two very
14 different stories between Rondell Carter and William Douglas.

15 A Absolutely.

16 Q Now, you talked about you charged Mr. Carter with no
17 driver's license and you took him to the detention center.

18 A Yes.

19 Q Typically when people get taken to jail it's not
20 uncommon for them to be antsy about getting out; is it?

21 A Not, not as antsy as him.

22 Q But, I mean, you would agree with me that you go to
23 jail, you want to get out.

24 A Oh, sure.

25 Q So, it's not necessarily out of the ordinary for that to

1 happen?

2 A No.

3 Q You went in the house once you got there as a SWAT team
4 member; didn't you?

5 A I wasn't a SWAT team member and I didn't go in the house
6 initially. I was with the SWAT team. I was with them but
7 they secured the house and I stayed outside.

8 Q You didn't - so, you didn't affect the dynamic entry or
9 whatever?

10 A No, I was outside the whole time.

11 Q You went in at some point though.

12 A After the SWAT team, I assisted investigations after,
13 the SWAT team was out, everybody was in custody, investigation
14 went in and started doing some things and then I went in after
15 it was all said and done.

16 Q Now, you, you recall observing some crack pipes, some
17 copper shavings?

18 A It's been so ---

19 Q Some kind of crack pipes?

20 A --- it's been so long I don't remember exactly what. I
21 just remember the house was just a mess. I mean, everything
22 was stuff torn up and ---

23 Q Do you remember seeing cigars cut up for - with
24 marijuana around them or anything like that?

25 A No.

Motions

278

1 MR. FELTS: That's all I have, Your Honor. Thank you.

2 THE COURT: All right, redirect.

3 MS. BAILEY: None from the State, Your Honor.

4 THE COURT: All right.

5 MS. BAILEY: At this time the State would request that
6 Sergeant Bardon be released from his subpoena.

7 THE COURT: Any objection?

8 MR. FELTS: No objection.

9 THE COURT: All right, you may step down. You're free
10 to go. Thank you very much. Call your next witness.

11 MS. BAILEY: The State rests at this time, Your Honor.

12 THE COURT: All right, all right, ladies and
13 gentlemen, the State has presented their case in this trial
14 and now is the time for me to take up some legal matters with
15 the attorneys. So, I'm going to excuse you back to the jury
16 room, give you an opportunity to stretch your legs, get
17 something to drink, use the restroom, whatever the case may
18 be. Please do not discuss the case even among yourselves at
19 this point in time. We'll bring you back out in just a
20 minute. Thank you very much.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, any motions?

24 MR. FELTS: Your Honor, at this time the Defense moves
25 for a directed verdict on all the charges. There hasn't - the

1 State hasn't set forth evidence sufficient to convict my
2 client on any of these charges. So, for those reasons I'd ask
3 directed verdict be granted on each and every one of those
4 charges. Furthermore, I want to renew my objections and renew
5 my motion for a mistrial.

6 THE COURT: All right.

7 MR. FELTS: For the, for the reasons already that - on
8 the record, Judge, and if you'd give me just a second. That's
9 all we have, Your Honor. Thank you.

10 THE COURT: All right, motions for directed verdicts
11 are noted but I'm going to deny those, likewise, your motion
12 for a new trial. As I understand the primary grounds for a
13 new trial was the reference to your client supplying marijuana
14 to one of the witnesses and I'm going to deny your motion.
15 All right, anything else?

16 MS. BAILEY: Nothing from the State, Your Honor.

17 THE COURT: All right, Mr. Felts, let's have your
18 client stand so I can question him on his right to testify and
19 then we'll take a short break so that you all can discuss that
20 further; okay?

21 MR. FELTS: Yeah.

22 MS. BAILEY: Your Honor, we're probably going to say
23 the same thing. If we could just verify on the Defendant's
24 previous record if he testifies what's going to be ---

25 THE COURT: Okay.

Questioning of Defendant Re: Rights

280

1 MS. BAILEY: --- put in on cross.

2 THE COURT: All right.

3 MS. BAILEY: The Defendant has a record, Your Honor,
4 for voluntary manslaughter and escape. He was released from
5 confinement on that voluntary manslaughter within the last 10
6 years and it's the State's position he would be subject to
7 cross-examination on that conviction should he take the stand.

8 THE COURT: So, you got voluntary manslaughter and an
9 escape.

10 MS. BAILEY: Yes.

11 THE COURT: Okay, and both of those are within the
12 last 10 years?

13 MS. BAILEY: The voluntary, he was convicted of the
14 voluntary manslaughter in '96 but he was released from - it
15 was a 15 year sentence. So, he was released from confinement
16 in the last 10 years, which is what the rule provides.

17 THE COURT: Okay, and escape was when?

18 MS. BAILEY: Let me see. Beg the Court's indulgence
19 for just a moment. Your Honor, I apologize - well, that,
20 yeah, that escape conviction was in 1995 and there was a six-
21 month sentence. So, that would not be.

22 THE COURT: Okay.

23 MS. BAILEY: But the voluntary manslaughter he was
24 convicted in 1997 and served a 15-year sentence. So, he was
25 released from confinement on that in the last 10 years.

1 THE COURT: When was he released from confinement?

2 MS. BAILEY: I don't have that information, Your Honor.
3 It would've been an 85 percent, so.

4 THE COURT: Not if he was convicted in '97. I don't
5 know.

6 MS. BAILEY: And then he would have been released on
7 community supervision, which is also considered the
8 confinement.

9 THE COURT: I mean, they had that 85 percent rule back
10 in 1997? I don't know. We'll need to find out when he was
11 released, okay?

12 MS. BAILEY: Find out that information, okay.

13 MR. FELTS: Yeah, we obviously would object to any of
14 that, Judge, and furthermore, I know you're going to give me a
15 chance to talk, but ---

16 THE COURT: Yeah.

17 MR. FELTS: --- it's real clear from Rule 609 that any
18 of that evidence is subject to a 403 analysis as far as
19 probative value outweighing the prejudicial effect. You know,
20 I don't know anything about the voluntary conviction but, I
21 mean, this is an alleged shooting. I mean, it doesn't get any
22 more prejudicial than that, Judge. I mean, what very minimal
23 probative value there may be is highly, highly prejudicial to
24 my client simply because of the - just the nature of the
25 charge.

Questioning of Defendant Re: Rights

282

1 THE COURT: Well, what - let me hear, what is the
2 State's probative value in using the voluntary manslaughter?

3 MS. BAILEY: Your Honor, it goes to truthfulness. It
4 goes to his, to his, to - it goes to - for cross-examination
5 it would go to his credibility.

6 THE COURT: Okay, all right, I'm going to sustain the
7 objection. I'm not going to allow you to cross examine him
8 unless he opens the door in some form or fashion. I'm going
9 to keep out the voluntary manslaughter and the escape. Okay?

10 MS. BAILEY: All right, thank you, Your Honor.

11 MR. FELTS: Thank you, Your Honor.

12 THE COURT: All right, thank you very much. All
13 right, Mr. Carter, if you'd please stand.

14 (Whereupon, Rondell Carter is sworn by the clerk.)

15 THE COURT: All right, I need you to speak up loud and
16 clearly; okay?

17 MR. CARTER: Yes, sir.

18 THE COURT: All right, you can put your hand down.
19 Your name is Rondell Leon Carter?

20 MR. CARTER: Yes, sir.

21 THE COURT: All right, Mr. Carter, at this time I'm
22 going to explain to you certain rights that you have under the
23 Fifth Amendment to the United States Constitution. If you do
24 not understand anything I say please let me know. If you want
25 me to explain anything in more detail please let me know. Do

1 you understand that?

2 MR. CARTER: Yes, sir.

3 THE COURT: All right, we've now reached the stage of
4 the trial where you may present your defense. You have the
5 right to claim the protections given to you by the Fifth
6 Amendment to the Constitution of the United States. This
7 amendment states in part that no person shall be compelled in
8 any criminal case to be a witness against himself. This means
9 that you cannot be required to testify in this case. You have
10 the right to testify on your own behalf. However, no one can
11 make you testify. This is a personal right and no one can
12 waive this right except for you. If you decide to testify you
13 will be subject to the same rules that govern other witnesses
14 and you may be examined and cross-examined on any relevant
15 issue in this case. In addition, if you have any convictions
16 involving dishonesty or false statement or for crimes
17 punishable by imprisonment for more than one year and this
18 Court determines that the probative value of admitting this
19 evidence outweighs its prejudicial affect to you the solicitor
20 will be able to introduce your record to attack your
21 credibility. If you decide to testify this decision on your
22 part must be freely, voluntarily and intelligently made with
23 knowledge of the protections given to you by the Fifth
24 Amendment of the United States Constitution and the
25 consequences of your decision to testify. If you decide not

Questioning of Defendant Re: Rights

284

1 to testify I will instruct the jurors that they cannot give
2 the fact that you did not testify any consideration whatsoever
3 and that there is to be absolutely no prejudice to you because
4 you did not testify. It is left entirely up to you whether or
5 not you testify. You may talk with your attorney, your family
6 and friends or anyone else, but the final decision will be
7 left entirely up to you. Now, do you understand what I've
8 explained to you?

9 MR. CARTER: Yes, sir.

10 THE COURT: All right, do you have any questions about
11 what I've explained to you?

12 MR. CARTER: No, sir.

13 THE COURT: All right, now, I'm going to have you
14 discuss this with your attorney. You all may have already
15 reached a decision. You may have already reached a decision
16 but let's go ahead and take about a 10-minute break, let you
17 talk to your attorney some more if you so choose to, but when
18 we come back I'm going to ask you if you have any questions
19 regarding your right to testify and I'm going to ask whether
20 or not you wish to testify; okay?

21 MR. CARTER: Yes, sir.

22 THE COURT: All right, thank you very much.

23 MR. FELTS: Thank you, Your Honor.

24 THE COURT: All right, let's stand in recess for about
25 10 minutes. Let's - if you all need to talk do you want to go

1 back there or do you want him to sit right here?

2 MR. FELTS: No, sir, I'll go back there. I'm going to
3 go to the restroom first.

4 THE COURT: Sounds good, all right, thank you very
5 much. We'll stand in recess for about 10 minutes.

6 MS. BAILEY: Thank you, Your Honor.

7 THE COURT: Thank you.

8 OFF THE RECORD

9 (On the record.)

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right, Mr. Carter, if you'd please
13 stand.

14 (Complies with request.)

15 THE COURT: All right, Mr. Carter, you recall the
16 explanation of your rights that I gave to you before we took
17 our recess?

18 MR. CARTER: Yes, sir.

19 THE COURT: Do you have any questions about those
20 rights or any questions about anything in general thus far?

21 MR. CARTER: No, sir.

22 THE COURT: All right, have you had an ample
23 opportunity to discuss your right to testify with your
24 attorney?

25 MR. CARTER: Yes, sir.

Questioning of Defendant Re: Rights

286

1 THE COURT: All right, all right, and do you wish to
2 testify in this case?

3 MR. CARTER: No, sir.

4 THE COURT: All right, Mr. Felts, does the Defense
5 intend to put up any defense in this case?

6 MR. FELTS: Your Honor, if I could just have one
7 moment briefly.

8 THE COURT: All right.

9 MR. FELTS: No, sir, Your Honor, we don't intend to
10 offer any evidence.

11 THE COURT: All right, I guess - so, we'll go - we've
12 got closing arguments, then charge and then deliberations; is
13 that correct?

14 MS. BAILEY: Yes, Your Honor.

15 THE COURT: All right, I'm wondering - it's about ten
16 till 11 and it's going to take me a little while longer to
17 finish up. I've got most of my charges done. I didn't know
18 if you all had any special charges or anything you wanted to
19 hand up. I've got your standard charges that I'm sure you all
20 want to see before you do your closing arguments.

21 MR. FELTS: Yes, sir.

22 THE COURT: So, I'm wondering just planning purposes
23 10 to 11 whether or not we want to go ahead, cut them loose,
24 let them go to lunch, come back. What do you think? Two
25 o'clock and do closing arguments, jury charges and begin

1 deliberations?

2 MR. FELTS: That's fine with me, Judge.

3 THE COURT: Okay.

4 MS. BAILEY: Suits the State, Your Honor.

5 THE COURT: Well, I mean, do you all think we can - I
6 can get mine maybe let's say one o'clock. Can we do that?

7 MR. FELTS: Yes, sir.

8 MS. BAILEY: Yes, Your Honor.

9 THE COURT: All right, let me go ahead and cut the
10 jury loose to go to lunch. We'll bring them back at one
11 o'clock, do closing arguments, jury charges and begin
12 deliberations. Okay.

13 MS. BAILEY: Thank you.

14 THE COURT: All right, anything from the State before
15 we bring the jury in?

16 MS. BAILEY: Nothing, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. FELTS: No, sir, Your Honor.

19 THE COURT: All right, let's bring the jury in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right, ladies and gentlemen, welcome
23 back. We have addressed some legal matters and it's now time
24 for us to address some other legal matters, but given the time
25 of day it's about five till 11. I'm going to go ahead and

State v. Carter

288

1 give you a lunch, let you go to lunch on your own. I'm going
2 to excuse you now for lunch and I'm going to ask that you
3 please be back in the jury room at one o'clock. That'll give
4 you about two hours to eat lunch. Please do not discuss the
5 case even among yourselves. Don't discuss it with anyone.
6 Don't try to conduct any independent investigations or
7 anything of that nature but we'll see you back at one o'clock
8 and we'll resume the trial of the case at that time. Thank
9 you very much. Everyone else please remain seated while the
10 jury is excused.

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right, anything from the State before
14 we break?

15 MS. BAILEY: Nothing, Your Honor.

16 THE COURT: Anything from the Defense?

17 MR. FELTS: No, sir, Your Honor, we'll be back here at
18 one o'clock?

19 THE COURT: Yeah, well, how about you all try to get
20 back, depending on how long you want to look over my closing
21 charges, I should have my charges done in about an hour. So,
22 I'll have them ready for you at 12 o'clock, so whenever you
23 want to get back to look over those. The jury will be back at
24 one o'clock. Soon thereafter I'd like to go ahead and bring
25 them in, start closing arguments and deliberations, okay? So,

1 any time between 12 and one, but I'll have the jury charges
2 for you at 12 o'clock, and then before we start closing
3 arguments I'll certainly give you an opportunity to object or
4 recommend additional charges or whatever the case may be,
5 okay? All right, sounds good. We'll see you then.

6 OFF THE RECORD

7 (On the record.)

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right, I understand my clerk has given
11 both the State and the Defense a copy of my proposed charges
12 and a verdict form on one of them. Is there any objection
13 from the State?

14 MS. BAILEY: None, Your Honor.

15 THE COURT: All right, from the Defense?

16 MR. FELTS: Your Honor, can we wait till ---

17 THE COURT: Oh, I'm sorry.

18 MR. FELTS: --- get out.

19 THE COURT: I'm sorry. I thought he was in here. I
20 apologize.

21 MR. FELTS: No, sir.

22 THE COURT: All right, any objection to the charges or
23 verdict form on the assault and battery with intent to kill
24 from the Defense?

25 MR. FELTS: Your Honor, if I can have 'just a brief

State v. Carter

290

1 minute with my client just ---

2 THE COURT: Okay.

3 MR. FELTS: --- here to let him take a look at it.

4 Thank you, Your Honor. Your Honor, we're certainly going to
5 object to the assault and battery with intent to kill verdict
6 form. We just object to the language of the - we, the jury
7 find the Defendant guilty of the lesser included - well, of
8 course it doesn't say lesser included, but we, the jury find
9 the Defendant guilty of assault and battery of a high and
10 aggravated nature.

11 THE COURT: Okay, so, you don't want it charged?

12 MR. FELTS: No, sir.

13 THE COURT: Okay, well, now, if you're going to argue
14 to the jury that there was no malice aforethought then the
15 charge is in because assault and battery with intent to kill
16 requires malice aforethought. Assault and battery of a high
17 and aggravated nature is the same exact thing except there's
18 no malice aforethought. It just has aggravating
19 circumstances. So, if you're going to argue to the jury that
20 the Defendant had no malice aforethought in causing injury
21 then I've got to charge it.

22 MR. FELTS: I'm not going to argue that to the jury,
23 Judge.

24 THE COURT: Okay, what's the State's position?

25 MS. BAILEY: The State has no position either way.

1 THE COURT: All right, if that's not going to be an
2 argument to the jury then I'll go ahead and delete the lesser
3 included offense of assault and battery of a high and
4 aggravated nature. I'll need to modify these charges so it'll
5 be in form. What - let me get you all's position on sending a
6 copy of the charges back to the jury.

7 MS. BAILEY: The State, the State is all for it. I
8 think it's a fantastic idea.

9 MR. FELTS: We would like to do it, too, Judge.

10 THE COURT: Okay, since there were so many charges
11 that's the reason I kind of did that. Usually I don't, but
12 when there's so many charges and I can see where they might
13 get confused on the elements of each crime. That's why I
14 wanted to put it in there. Okay.

15 MS. BAILEY: Yes, Your Honor, thank you.

16 MR. FELTS: Judge, we got a - we also got another
17 objection and I was going to go over it with my client briefly
18 here with the aiding and abetting ---

19 THE COURT: All right.

20 MR. FELTS: --- at least at the outset. Judge, our
21 objection to that aiding and abetting charge is that there's
22 no - you know, the State never charged Mr. Carter with any
23 sort of accessory or anything like that; and so, I would say
24 that it's just, it's just not relevant to the case. There's
25 also a mere presence charge that's in there that I don't have

State v. Carter

292

1 any objection to but I think that at least covers
2 substantially the aiding and abetting part. I just I don't -
3 our position is is that there's just - those - there's no
4 accomplice liability charges I guess as far as from the State.
5 He was never indicted for accessory after the fact or before
6 the fact or whatever.

7 THE COURT: I understand.

8 MR. FELTS: So, that's our - the purpose for that
9 objection.

10 THE COURT: All right, Ms. Bailey.

11 MS. BAILEY: The State contends that those should be in
12 the charge because on the allegation specifically of assault
13 and battery with intent to kill there's been testimony that
14 Mr. Carter directed someone else to shoot the victim and that
15 accomplice liability charge doesn't have to do - accessory
16 before and after the fact are totally separate charges. The
17 accomplice liability charge indicates that someone is guilty
18 of the principal offense if they act as an accomplice and
19 that's exactly the allegations in this case. So, it's
20 relevant.

21 THE COURT: All right.

22 MR. FELTS: And Judge, I mean, that, that is handled
23 by the hand of one hand of all charge. I got no objection to
24 that.

25 THE COURT: All right, well, I'm going to go ahead and

1 leave it in there. I overrule your objection on that one.

2 MS. BAILEY: Thank you, Your Honor.

3 MR. FELTS: Judge, and just the last thing we need to
4 do we'd like to add, this is, this is straight from the bench
5 book as I understand it. This is a spoliation of evidence
6 charge, and if I may approach.

7 THE COURT: All right, what is spoliation, what
8 evidence are you contending?

9 MR. FELTS: Well, essentially, Judge, and actually
10 specifically on cross of the evidence custodian, Mike Thacker,
11 wherein we tried to flesh out that he let evidence out of his
12 care when he testified that he didn't, and that, you know,
13 there were certain things that he didn't do and that the State
14 didn't do to this evidence; and so, but that was definitely
15 part of the testimony. So, that's why we would ask that the
16 spoliation charge be put in.

17 THE COURT: All right, I don't think there's anything
18 in the record to support that. As I said, he denied that
19 there was any evidence that got spoiled or anything. So,
20 without any, any identification of any evidence that has been
21 spoiled I'm going to deny your request on that charge.

22 MR. FELTS: Thank you, Your Honor.

23 THE COURT: All right, anything else?

24 MS. BAILEY: Nothing from the State, Your Honor.

25 THE COURT: Anything from Defense?

1 MR. FELTS: No, sir, Your Honor.

2 THE COURT: All right, now, what'll happen is I'll go
3 back and let me make - update my charges. Then we'll do the
4 closing arguments. I'll charge the jury. When I send the
5 jury out before deliberations I'll give you another
6 opportunity at that time. You don't have to place your
7 objections back on the record that you've raised now, but if
8 during the course of my charges something else comes to mind
9 you can address it then. You don't have to bring it back up
10 again like the spoliation of evidence or anything of that
11 nature, but if there's anything new I'll give you another
12 opportunity. Okay?

13 MR. FELTS: Thank you, Your Honor.

14 THE COURT: All right, anything from the State?

15 MS. BAILEY: Nothing, Your Honor.

16 THE COURT: All right, let me take a short break to
17 update these; and so, what I'm going to do is just send the
18 indictments back and not use the verdict form. Okay?

19 MS. BAILEY: Thank you.

20 THE COURT: All right, thank you very much. Stand in
21 recess for about 10 minutes.

22 OFF THE RECORD

23 (On the record.)

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

1 THE COURT: All right, anything from the State before
2 we bring the jury in?

3 MS. BAILEY: Nothing, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. FELTS: No, sir, Your Honor.

6 THE COURT: All right, let's go ahead and bring the
7 jury in.

8 (Whereupon, the following takes place in the presence of
9 the jury.)

10 THE COURT: All right, ladies and gentlemen, I hope
11 everyone had a good lunch. We're now ready to resume the
12 trial of this case. All of the evidence has been presented to
13 you. The Defense has decided not to place, not to testify in
14 this case, and I'll give you some instructions on that in just
15 a minute but now is the time of the trial where the attorneys
16 will make their closing arguments. Now, just like their
17 opening statements these closing arguments are not evidence in
18 this case. It is simply the attorneys' contention as to what
19 they feel the evidence has shown and what they feel the law is
20 in this case. If at any time the attorneys make a factual
21 statement or a statement regarding a factual issue that is
22 different from what you find those facts to be or if they make
23 a comment on the law that is different from the law as I give
24 it to you at the end of their closing arguments then you're to
25 disregard their statements. As I said, this is simply the

Closing Argument by Ms. Bailey

296

1 attorney's contention as to what the facts are in this case
2 and what the law is in this case and it is not evidence in
3 this case. All right, Ms. Bailey.

4 MS. BAILEY: I told you when we started here that this
5 is a case about greed. This is a case about Rondell Carter
6 who steals money. In this case he decided to steal that money
7 from William Douglas. Why William Douglas? William Douglas
8 had cash. He lived in the middle of nowhere on the river and
9 he had a crack problem, hung around with people who had a
10 crack problem. Rondell Carter knew that most likely if he
11 went there and robbed William Douglas nobody would report it.
12 Even if they did report it he knew nobody would believe him.

13 Now, we've heard some conflicting testimony about when
14 people came and went from the house, about where they went
15 when they left that house on Mossdale Drive during this
16 incident. We've heard some conflicting testimony about the
17 details, but what we have not heard any conflicting testimony
18 from those witnesses about are the crimes that Rondell Carter
19 is charged with. Those crimes - that is your job is to
20 evaluate the facts of the case and the law and decide based on
21 the facts that were presented to you whether Rondell Carter is
22 guilty of those crimes. The crimes that he's charged with are
23 burglary in the first degree. Burglary in the first degree is
24 entering somebody's house with the intent to commit a crime
25 inside when you're not allowed to be there. Nobody has

1 invited you inside, while armed with a deadly weapon or if you
2 injure somebody inside. We heard testimony from every
3 witness, every person that was there that testified said that
4 Rondell Carter was not invited inside that house. Every
5 person that testified said that the only people authorized to
6 be inside that house were Jamie Powell, William Douglas and
7 Christina Carroll. We heard testimony that once inside the
8 house Rondell Carter along with Matthew Cobb, Herman McCray,
9 Jr., and Robert Richardson, Jr., they ransacked house. They
10 took out valuable items. They removed them from the house.
11 They intended to commit that crime when they entered the house
12 and we've heard testimony that Rondell Carter was armed with a
13 gun when he entered that house.

14 The next crime that Rondell Carter is charged with is the
15 armed robbery of William Douglas and the armed robbery of
16 Christina Carroll. An armed robbery is the forcible taking of
17 someone else's property off their person while armed with a
18 deadly weapon. We heard testimony from Rosa Milton. Rosa
19 said that she walked in that house and that William Douglas
20 had a gun and he said, "Sorry, baby girl, wrong place, wrong
21 time." We heard the testimony of William Douglas that he
22 walked in that house that they, there was a lot of commotion,
23 that there was guns going off, they were shooting up the place
24 and that Rondell Carter pointed a gun at him and said, "Empty
25 your pockets and take your clothes off." We heard testimony

1 from William Douglas that he had a necklace on. He hadn't
2 seen that necklace since that night. We heard testimony from
3 Investigator Phil Hanna that that necklace was found on the
4 belongings of Rondell Carter after he was arrested, at the
5 jail.

6 Rondell Carter is also charged with the armed robbery of
7 Christina Carroll. We heard testimony from Ms. Carroll that
8 when she walked in the house, when she actually made it inside
9 the house that Rondell Carter pointed a gun at her, told her
10 to take off all her jewelry, empty her pockets and that he
11 took her belongings off of her. We heard from her that she
12 had a gold tennis bracelet, gold diamond tennis bracelet. The
13 last time she had seen that was that night. We heard from
14 Investigator Phil Hanna that that gold diamond tennis bracelet
15 was also on the property of Rondell Carter when he was
16 arrested.

17 Rondell Carter is charged with kidnapping. He's charged
18 with the kidnapping of William Douglas and the kidnapping of
19 Christina Carroll. Kidnapping has a long definition legally
20 in the State of South Carolina with a lot of words in it like
21 inveigle and decoy. Here's what it means. Kidnapping means
22 holding somebody against their will, not letting them go where
23 they want to go. William Douglas testified that he went with
24 Rondell Carter in that car because Rondell Carter threatened
25 his fiancé and threatened his friend back at home. Rondell

1 Carter said, "With one phone call if you do anything, if you
2 try to escape, if you try to get out of this car, if you try
3 to get help one phone call and I'll call back to the house and
4 have those girls taken care of."

5 William Douglas testified that in the house he did not
6 feel free to leave. Rosa Milton testified that those folks
7 weren't free to leave and Herman McCray, Jr., testified that
8 those folks couldn't leave. Christina Carroll fought back.
9 Christina Carroll tried to leave. She tried to hide behind
10 the air conditioner and what did she get for that? She got
11 hit in the head with a gun. She tried to physically push
12 these people out of her house and for that she got shot.
13 Clearly, she was unable to get out of that house, and clearly,
14 she was being confined against her will. That's kidnapping.

15 Rondell Carter is charged with assault and battery with
16 intent to kill. That's harming somebody with malice
17 aforethought with the intent to commit, with the intent to
18 harm them with malice aforethought. Christina Carroll was
19 shot at the direction of Rondell Carter. You heard from
20 Christina Carroll. You heard from William Douglas. They both
21 told you that Rondell Carter directed Matthew Cobb to shoot
22 her. Now, I know you all are probably concerned about what's
23 going to happen to Matthew Cobb, what's going to happen to
24 Herman McCray, Jr., what's going to happen to Robert
25 Richardson, Jr. I want you all to know they will all have

Closing Argument by Ms. Bailey

300

1 their day in court and that day is not today. Today is the
2 trial of Rondell Carter.

3 Now, we heard a lot of testimony, a lot of folks that
4 talked about what happened and that talked about the crimes.
5 Fortunately, we don't have to rely on their word alone. There
6 was a crime scene investigation done and evidence collected
7 and that evidence corroborates the story that we heard from
8 these witnesses. How do we know that Matthew Cobb
9 accidentally shot himself when he was trying to shoot
10 Christina? Because when Matthew Cobb was arrested a search
11 warrant was executed on his belongings and located was a T-
12 shirt, a T-shirt that has a bullet hole in it and you all can
13 take this back in the room with you and you can examine it
14 more closely so you can see it. This is Matthew Cobb's white
15 T-shirt. It was on him at the jail with a bullet hole from
16 where he shot himself when he was trying to shoot Christina
17 Carroll. He shot Christina Carroll at the direction of
18 Rondell Carter. That's consistent with the testimony that
19 you've heard.

20 We heard testimony that they tried to conceal their
21 identity with dark colored bandannas. Again, we don't just
22 have to rely on their word. When Matthew Cobb was arrested he
23 had a dark camo bandanna on his person when he was arrested
24 and when he was booked into the jail. Again, you can take
25 this back with you into the jury room and examine it for

1 yourselves.

2 Also located in the house was this blue, dark blue
3 bandanna. Now, the house was a mess because according to the
4 testimony it had been ransacked; and so, I'm sure the defense
5 attorney would like for you to believe that this blue bandanna
6 was already located in the house. Thankfully we have pictures
7 of where the blue bandanna was located inside the house.
8 Again, this can go back in the jury room with you and you can
9 look at it. You can see that the blue bandanna was not
10 located in a drawer. It wasn't in a pile of other clothes,
11 wasn't hidden under anything. It was out in the open.

12 You heard testimony that Rondell Carter had a gun, that
13 he had a black 380 Hi-Point, that he pointed it at several
14 people and that he directed Matthew Cobb to shoot Christina
15 Carroll with the gun. We don't just have to rely on their
16 word. We have the gun. The gun is in evidence. It's locked
17 for safety, but again, you all can take this evidence in the
18 jury room and examine it. That gun was found in the toilet
19 tank in the house. That gun was located, and remember,
20 Investigator Thacker showed us exactly where this evidence was
21 located. The gun was located right over here in the toilet
22 tank. The blue bandanna was located just inside this bedroom
23 door here. You heard testimony that some of the witnesses
24 heard shots fired outside. Again, we don't have to just rely
25 on their testimony. Officer Lynn Picard located bullets

1 outside in the grass. There's five of them. You can go
2 through each one with the picture and the bullet.

3 We heard testimony from William Douglas that when he
4 walked into the house they were shooting the floor, they were
5 shooting. He said it was just chaos. Again, we don't just
6 have to rely on his testimony alone. There's evidence to
7 corroborate the testimony. The shell casing was located
8 inside the house. There is a picture of where it was
9 recovered. Here's the actual shell casing. This one was
10 found right there. There was another shell casing located in
11 the house. Here's the picture of the shell casing of where it
12 was located when it was discovered. Here's the actual shell
13 casing. This one was located here.

14 There was a bullet slug found in the house. There's a
15 picture where they located the bullet slug and here's the
16 actual bullet slug. These were located, according to
17 Thacker's testimony, here. Finally, there was one more bullet
18 slug found. Here's a picture of where it was found. Here's
19 the actual slug. Again, this all corroborates the testimony
20 that you've already heard. It was located right there.
21 That's what Thacker testified to. There was a hole in the
22 wall. You've seen the picture of a hole in the wall, bullet
23 hole in the wall and where a bullet tore through some of the
24 wood in the wall. We don't have to just rely on the witness'
25 statements. Even though they're consistent as to the crimes in

1 this case we have evidence. We have evidence that
2 corroborates what they have said. You'll have these pictures
3 back in the jury room to examine as well. This is the jewelry
4 that was last seen by William and Christina actually on them.
5 At gunpoint they were told to give up this jewelry and to give
6 it to the Defendant Rondell Carter. This jewelry was found on
7 Rondell Carter at the jail.

8 As to the assault and battery with intent to kill Ms.
9 Carroll came in here dressed up yesterday, didn't look like
10 somebody who had been hit in the head with a gun. These
11 pictures were taken that day. You have these pictures to rely
12 on for evidence. These pictures show you that when she tried
13 to escape she was met with violence every time.

14 You're going to hear a jury charge about the hand of one
15 hand of all. I already explained that to you a little bit in
16 the opening statement. Hand of one hand of all is a legal
17 principle, simply means that when several people engage in a
18 criminal enterprise, several people decide to go in and commit
19 a crime together, if it's a foreseeable consequence what one
20 person does they're all responsible for. The only thing that
21 Rondell Carter did not do himself was pull the trigger and
22 shoot Christina Carroll but you've heard testimony that he
23 directed someone else to do it. The hand of one is the hand
24 of all.

25 Now, you all heard some testimony that probably made you

Closing Argument by Ms. Bailey

304

1 have a negative opinion of these victims, of Christina
2 Carroll, William Douglas. You heard some testimony about drug
3 use, about drinking, about some sexual relations that happened
4 that night. You heard Christina Carroll say, "You just don't
5 know what it's like. You just don't know what it's like to be
6 in that situation." Christina Carroll was shot in the leg and
7 hit in the head with a gun and did not get taken to the
8 hospital. Nobody even gave her a Tylenol. That doesn't excuse
9 the fact that she used drugs and drank and it seems really
10 strange that she was being held, that she was being kidnapped
11 and it's something that not any of us could understand but it
12 doesn't mean that it didn't happen. The drinking, the drugs,
13 the sex, it all happened after she was shot. It happened after
14 she was hit in the head. It happened after the burglary
15 first. It happened after the armed robbery. Well, I'm sure
16 you all aren't crazy about those facts. It doesn't change the
17 crimes alleged. It doesn't change the Defendant's guilt or
18 innocence in this case. "Sorry, baby girl, wrong place, wrong
19 time." If there's any doubt that these Defendants went in
20 there with the intent to do anything other than some criminal
21 activity that statement alone proves the point. "Sorry, baby
22 girl, wrong place, wrong time."

23 Now, you're going to hear about the State's burden of
24 proof. I have to prove to you that crimes were committed and
25 that Rondell Carter committed them and I have to prove to you

1 beyond a reasonable doubt. Well, what does that mean? The
2 Judge is going to charge you that a reasonable doubt is a
3 doubt that would cause someone to hesitate to act. It's not
4 any doubt. It's a doubt that's serious enough that would
5 cause you to hesitate to act. Anybody can poke holes - if you
6 say the sun is not going to come up tomorrow, I'm sure you
7 could come up with a logical reason that the sun isn't going
8 to come up tomorrow, but it doesn't mean I'm not going to set
9 my alarm clock. It has to be a doubt that would make you
10 hesitate to act.

11 I know you all are already to get out of here. I
12 appreciate your jury service and I ask that you go in that
13 room and look at all these crimes, all the crimes that have
14 been charged and look at the evidence that you been given, you
15 seriously consider each one and that you return a verdict of
16 guilty on all counts.

17 MR. FELTS: May it please the Court?

18 THE COURT: All right, Mr. Felts.

19 MR. FELTS: Remember I told you in the opening
20 statement things are not always as they seem. Things aren't
21 always as they seem. Remember what I told you about the
22 State's burden of proof, beyond a reasonable doubt, the
23 highest burden in the law, one step higher than the burden
24 that DSS has to show to take your kids away from you. It's a
25 high burden, the highest in the law.

Closing Argument by Mr. Felts

306

1 Now, in just a few minutes the Judge is going to tell you
2 a bunch of stuff. He's going to tell you about the law in
3 South Carolina about all these charges that my client is
4 charged with or that my client is accused of committing and
5 he's going to tell you, he's going to spend some time on
6 witness credibility and bias and he's going to say you can
7 believe some of what the witness says or none of what the
8 witness says or all of what the witness says but it's on you
9 to determine if they're credible or not. Credibility is the
10 key to this whole case.

11 Now, let's talk about those witnesses and their
12 credibility. There were three alleged victims, Rosa Milton,
13 William Douglas and Christina Carroll who talked. They
14 testified and there's no question there was evidence of this,
15 they admitted to prior drug use, admitted to prior drug
16 addictions. As a matter of a fact Christina admitted that she
17 smoked weed and drank a pint of liquor during this whatever
18 this was that happened. There's also testimony that there was
19 drug use going on at this residence at Mossdale Lane. There
20 was crack pipes found. There was unrolled cigars that looked
21 like marijuana was around them and whatnot, and so there was
22 no question about that.

23 Some of the witnesses testified they had criminal
24 records. Two of them are sitting right there. They've got
25 criminal records. They're on probation. That all goes to

1 witness credibility.

2 Now, let's talk about the only Co-Defendant who
3 testified. How in the world is that guy credible? He didn't
4 even want to tell you that he had cut a deal with the State to
5 testify against my client. I had to come up here, I had to go
6 back to my stuff, march over here. I had to get my file out
7 and show him the letter that the State gave to him and said,
8 "Hey, this is what you're doing," and we sat there for 15
9 minutes while he read that thing. His lawyer signed it. He
10 signed it that said, "Hey, this is what I'm going to do. I'm
11 going to tell some stuff about Rondell in exchange for a plea
12 deal." Why in the world would he have done that? Two other
13 Co-Defendants they did the same thing. You didn't hear from
14 them. There's a whole lot of questions you all. Why, why
15 would these alleged victims come up with such a crazy story,
16 crazy story? Is that what people who are drug addicts just
17 do? Why would two of the alleged victims, Rosa Milton and
18 Thermond Seward, why would they be let go during this whole
19 deal? They were let go, went home and didn't call the police.
20 What is the first thing that somebody is going to do if you're
21 a witness to all this horrible stuff and you get let go what
22 you going to do? You're going to pick up your phone, 911,
23 "I've got this - somebody, my friend is getting robbed,
24 they're getting shot," and doing all this other stuff. That
25 never happened. You heard a 911 call. You didn't hear one

Closing Argument by Mr. Felts

308

1 like that. Why didn't William and Christina ever say anything
2 about Rosa Milton and Thermond Seward to the cops? You heard
3 testimony about that. They didn't say one word about them
4 when they first talked to the cops. Why not tell the cops,
5 "Hey, guess what, there was two people that were let go."
6 Somehow they didn't tell the cops that? Why?

7 And why didn't we hear from the other Co-Defendants? The
8 solicitor said they've already had their day in court or
9 they're going to have their day in court. I disagree with
10 that. They had their day in court. They pled guilty
11 yesterday in exchange for a deal.

12 MS. BAILEY: Your Honor, objection. That's, that's not
13 in evidence. That's facts not in evidence.

14 THE COURT: Well, I've told the jury if they find,
15 disagree with the facts as relayed by the attorneys they're to
16 disregard it. I'll allow it. Go ahead.

17 MR. FELTS: Thank you, Your Honor.

18 Why, ladies and gentlemen, why, why this crazy story?
19 I'll tell you why. This is an overnight crack, marijuana,
20 liquor binge, people were coming and going. They were leaving
21 the party and they came to the party and they left the party
22 and they didn't call the cops and William and Christina told
23 you all they had sex during the middle of this thing. Who in
24 the world is going to have sex during the middle of an armed
25 robbery? This is an overnight drug binge, a drug party. The

1 next day my client, William Douglas, you know, ride around and
2 try to cash some checks to pay for the drugs that were used.
3 The jewelry that was on my client was collateral, given to
4 him by these two alleged victims. Does a kidnapper let his
5 victim out of the car at the 521 mini-mart to go inside by
6 himself so that he may call 911 or do whatever? Does somebody
7 do that?

8 You heard testimony that they went to Chip Daniels a bail
9 bondsman in town. He evidently didn't think there was a
10 kidnapping. You didn't hear from him. If he did I guarantee
11 you you would have heard from him.

12 Sergeant Bardon sat up here. He's a young guy. He's got
13 a little gray hair on his head, rather to turn gray than to
14 turn loose like mine has but he sat here and testified that he
15 stopped, he did a felony car stop. "Get out of the car," you
16 know, whatever, and guess what, my client didn't have a gun on
17 him, no gun in the car and what was my client worried about?
18 Driving without a license, not a kidnapping, not two armed
19 robberies, not a burglary, not an ABWIK, not a possession of a
20 violent - possession of a weapon during the commission of a
21 violent crime. He's worried about driving without a license
22 and he was antsy at the jail. Well, people get antsy at the
23 jail. You don't want to be behind bars. You want to get out.
24 It's ridiculous to think of any other, any other explanation
25 than for not wanting to be behind bars, and guess what else

Closing Argument by Mr. Felts

310

1 about that car stop, that traffic stop on Highway 521? Wasn't
2 any phone call made back to Mossdale to order people to be
3 killed. That didn't happen.

4 Now, let's switch gears just a little bit. Let's talk
5 about this evidence. We've got a bunch of evidence over here
6 and we've got a gun over here and we've got some casings and
7 some other stuff. Let's talk about that. Investigator
8 Thacker came in here first thing yesterday morning, sat right
9 there. The Solicitor asked him a bunch of questions, "You had
10 this stuff in your possession the whole time." "Yes, I did,"
11 and I got to cross examine him. I said, "You didn't really
12 have this stuff in your possession the whole time; did you?
13 As a matter of a fact you gave that stuff to the solicitor the
14 morning of trial and you ain't seen it since then. How do you
15 know what's happened to it?" Why would he do that? Why would
16 you give that stuff away?

17 Second of all let's talk about fingerprints and DNA and
18 all that stuff. None of that was done. Why not? Why would
19 you not do that? Why would you not take fingerprints of that
20 gun? I mean, it's involved in this horrible, horrible crime,
21 alleged horrible crime and you don't fingerprint, it's not
22 done, that was not done, there's no evidence of that. Why
23 would they not do that?

24 There's some bullets over here, shell casings, whatever,
25 I don't know, they're in a can in a bag. Well, isn't there

1 bullets. Where did they come from? There wasn't any ballistics
2 testing, don't know if came out of that gun right there. That
3 place is out in the country, bullets on the ground, bullets
4 inside the house, whatever, they had - nothing was tested,
5 there was no testimony any of that stuff matched that gun.

6 Folks, these are serious, serious, serious crimes and the
7 sheriff's office, the law enforcement people did not test
8 any of this stuff and my client's freedom is in jeopardy and
9 they didn't test this stuff. I tell you, you know, it's
10 pretty clear that Ms. Bailey and I don't agree on a whole lot
11 in here today. I tell you one thing I do agree on, that's
12 conflicting evidence. She said it in her closing, and I want
13 to go on a little bit in that direction and say that, you
14 know what, there is zero credible evidence, zero, with which
15 you can convict my client or for that matter that my client
16 committed any of these crimes and what little bit of stuff
17 we got over here and that you've heard over here at this
18 witness stand is a far cry, far cry from their burden.
19 Their burden is beyond a reasonable doubt. That's what
20 the Constitution of the United States of America guarantees
21 each and every one of us when we're accused of a crime and
22 it has to be proven by the State or by the Government
23 beyond a reasonable doubt. It's not done here, folks.
24 This case is riddled with doubt, and for that reason
25 alone there's absolutely no way that you could convict my

Charge

312

1 client of any of these charges and I want to thank you for
2 your time, thank you for your patience. It's been a long
3 couple of days. You now what's right. You all know what's
4 right. The right verdict is a verdict of not guilty. Thank
5 you.

6 THE COURT: All right, ladies and gentlemen, all of
7 the evidence in this case has now been presented to you and
8 now is the time of the trial for me to charge you with the law
9 to be applied in this case. I will give you a copy of these
10 instructions in written form. During your deliberations you
11 may refer to the instructions to guide your decision-making.
12 However, you must consider the instructions as a whole and not
13 follow some instructions and ignore others. Please return the
14 instructions to the Court at the time your verdict is
15 rendered.

16 The indictments in this case allege several different
17 offenses against the Defendant. The charges are burglary in
18 the first degree, two counts of kidnapping, possession of a
19 weapon during the commission of a violent crime, two counts of
20 armed robbery and assault and battery with intent to kill.
21 Each indictment charges a separate and distinct offense. You
22 must decide each indictment separately on the evidence and the
23 law applicable to it uninfluenced by your decision as to any
24 other indictment. The Defendant may be convicted or acquitted
25 on any or all of the offenses charged. You will be asked to

1 write a separate verdict of guilty or not guilty for each
2 indictment.

3 The Defendant has pled not guilty to these indictments
4 and that puts the burden on the State to prove the Defendant
5 guilty. A person charged with committing a criminal offense
6 in South Carolina is never required to prove his innocence. I
7 charge you that an important rule of the law is that the
8 Defendant in a criminal trial no matter what the seriousness
9 of the charge may be will always be presumed to be innocent of
10 the crime for which the indictment was issued unless guilt has
11 been proven by evidence satisfying you of that guilt beyond a
12 reasonable doubt. This presumption of innocence does not end
13 when you begin your deliberations, but it accompanies the
14 Defendant throughout the trial until you reach a verdict of
15 guilt based on evidence satisfying you of that guilt beyond a
16 reasonable doubt.

17 The presumption of innocence is like a robe of
18 righteousness placed about the shoulders of the Defendant
19 which remains with the Defendant until it has been stripped
20 from the Defendant by evidence satisfying you of the
21 Defendant's guilt beyond a reasonable doubt.

22 The presumption of innocence is not a mere legal theory.
23 It is not just a legal phrase. It is a substantial right to
24 which every Defendant is entitled unless you, the jury, are
25 satisfied from the evidence of the Defendant's guilt beyond a

Charge

314

1 reasonable doubt.

2 Now, what is reasonable doubt in the law? A reasonable
3 doubt is the kind of doubt that would cause a reasonable
4 person to hesitate to act. Proof beyond a reasonable doubt is
5 proof that leaves you firmly convinced of the Defendant's
6 guilt. We know very few things in this world with absolute
7 certainty, and in criminal cases the law does not require
8 proof that overcomes every possible doubt. If, based on your
9 consideration of the evidence, you are firmly convinced that
10 the Defendant is guilty of the crime charged you must find the
11 Defendant guilty. If on the other hand, you think a real
12 possibility exists that the Defendant is not guilty, you must
13 give the Defendant the benefit of that doubt and find him not
14 guilty.

15 I remind you that during this trial, you and I have
16 certain duties to perform. As the trial judge, my
17 responsibility is to preside over the trial of this case. I
18 also have the duty to rule on the admissibility of evidence
19 offered during this trial. You are to consider only the
20 competent evidence before you. If any testimony was ordered
21 stricken from the record in this case during this trial, you
22 must disregard that testimony. You are to consider only the
23 testimony which has been presented from the witness stand, any
24 exhibits which have been made a part of the record in this
25 case and any stipulations of the counsel.

1 I have the additional duty to charge you the law
2 applicable to this case. As the presiding judge, I am
3 the sole judge of the law of this case. Your duty as
4 jurors is to accept and apply the law as I now state it
5 to you. If you already have any idea as to what the law
6 is or what the law ought to be and your idea does not
7 agree with what I now tell you the law is, you must
8 abandon your idea of what the law is or ought to be
9 because you are sworn to accept the law and apply the
10 law exactly as I state it to you.

11 In every case tried in this court before a jury,
12 The jury is the sole and exclusive judge of the facts
13 in a case. A trial judge cannot intimate, state, comment on
14 or make any statement to a trial jury about the facts in a
15 case. Since you, the jury, are the sole judge of the facts in
16 this case, you are not to infer from what I have said during
17 the progress of this trial in ruling on the admissibility of
18 evidence or otherwise or anything that I say during the
19 course of this instruction to you that I have any opinion
20 about the facts in this case. The law does not allow me to
21 have an opinion about the facts in this case. This matter is
22 solely for you, the jury, to determine. As jurors your duty
23 is to determine the, excuse me, the effect, the value, the
24 weight and the truth of the evidence presented during this
25 trial.

Charge

316

1 Necessarily, you must determine the credibility of
2 witnesses who have testified in this case. Credibility simply
3 means believability. Your duty as jurors is to analyze and to
4 evaluate the evidence and determine which evidence convinces
5 you of its truth. In determining the believability of
6 witnesses who have testified in this case, you may believe one
7 witness over several witnesses or several witnesses over one
8 witness. You may believe a part of the testimony of a witness
9 and reject the remaining part of the testimony of the same
10 witness. You may believe the testimony of a witness in its
11 entirety or reject the testimony of a witness in its entirety.
12 You may consider whether any witness has exhibited to you any
13 interest, bias, prejudice or other motive in this case. You
14 may also consider the appearance and manner of a witness while
15 on the witness stand.

16 Evidence has been presented that witnesses have made
17 prior statements which are not consistent with the witnesses'
18 present testimony. You may use this evidence to decide
19 whether to believe the witness. You may also use evidence of
20 the earlier contradictory statements to determine the truth of
21 those statements. It is up to you to decide whether to
22 believe the earlier statements or the testimony given at
23 trial.

24 If a witness is shown to have knowingly testified
25 untruthfully concerning any material matter, you may consider

1 this in determining whether to trust the witness' testimony as
2 to other matters. You may reject all testimony of that
3 witness or give all or part of the testimony the weight you
4 think it deserves.

5 You have heard testimony from witnesses who have prior
6 criminal records. A person who has a past criminal record is
7 competent to testify during a trial. A past record does not
8 affect the ability of that witness to testify. The past
9 record may only be considered by you, if at all, in
10 determining the witness' believability. Remember, you are the
11 sole judges of the facts in the case and of the believability
12 of any and all of the witnesses.

13 I instruct you and emphasize that the fact that the
14 Defendant did not testify is not a factor to be considered by
15 you in any way in your deliberations and in your consideration
16 of the question of the guilt or the innocence of the
17 Defendant. The fact that the Defendant did not testify must
18 not be considered by you in any manner whatsoever. The
19 Defendant has the constitutional right to remain silent, and
20 the assertion of this right must not be considered by you in
21 your deliberations. I repeat, under your oath, you are to
22 draw no conclusion whatsoever from the fact that the Defendant
23 in this case did not testify. The fact that this Defendant
24 did not testify should not even be discussed in the jury room.
25 The burden of proof, as I have stated to you, is on the State.

Charge

318

1 The Defendant is not required to prove his innocence. The
2 burden of proof remains on the State to prove guilt beyond a
3 reasonable doubt.

4 Now, a person who is present at the scene of a crime and
5 intentionally or through a common plan aided, abetted or
6 assisted in the commission of that crime through some overt
7 act is guilty as an accomplice. To be liable as an
8 accomplice, the Defendant must have knowledge of the
9 principal's criminal conduct. Mere presence at the scene of
10 the crime is not sufficient to establish guilt as an
11 accomplice. Intentionally means willfully; intending the
12 result which actually occurs; not accidentally or
13 involuntarily.

14 If a crime is committed by two or more people who are
15 acting together in committing a crime, the act of one is the
16 act of all. A person who joins with another to commit an
17 unlawful act is criminally responsible for everything done by
18 the other person which happens as a probable or natural
19 consequence of the acts done in carrying out the common plan
20 and purpose. For example, two people can be guilty of killing
21 another person when only one of the two had a gun, there was
22 only one bullet and only one of the two fired the shot that
23 caused the death. If two or more people are together, acting
24 together, assisting each other in committing the offense, the
25 act of one is the act of all or, as it is sometimes said the

1 hand of one is the hand of all.

2 Prior knowledge that a crime is going to be committed,
3 without more, is not sufficient to make a person guilty of
4 that crime. Mere knowledge that another person is going to
5 commit a crime, even if the Defendant is present when the
6 crime is committed, is not sufficient to convict the Defendant
7 as a principal. Guilt as a principal is shown by actual or
8 constructive presence at the scene as a result of prior
9 arrangement. Therefore, a finding of a prior arranged plan or
10 common scheme is necessary for a finding of guilt as a
11 principal. The State must prove beyond a reasonable doubt by
12 competent evidence the theory of the hand of one is the hand
13 of all.

14 A principal in a crime is one who either actually commits
15 the crime or who is present aiding, abetting or assisting in
16 committing the crime. When a person does an act in the
17 presence of and with the assistance of another, the act is
18 done by both. Where two or more, acting with a common plan or
19 intent, are present at the commission of a crime, it does not
20 matter who actually commits the crime. All are guilty. The
21 hand of one is the hand of all. Present at the commission of
22 a crime means to be sufficiently near to aid and abet and
23 assist in the commission of the crime. However, mere presence
24 at the scene of a crime is not sufficient to convict one as a
25 principal on the theory of aiding and abetting. Intent is

Charge

320

1 also a necessary element, for there must have been a common
2 design or intent to commit the crime and the crime must have
3 been committed pursuant thereto with the person aiding and
4 abetting some overt act. Intent means intending the result
5 which actually occurs; not accidentally or involuntary.
6 Intent may be shown by acts and conduct of the Defendant and
7 other circumstances from which you may naturally and
8 reasonably infer intent. The State must prove these elements
9 beyond a reasonable doubt.

10 In order to establish criminal liability, criminal intent
11 is required. For example, the mental state required to be
12 proven by the State for a particular crime might be purpose,
13 intent, knowledge, recklessness or criminal negligence.
14 Criminal intent must be proven by the State beyond a
15 reasonable doubt. Criminal intent is always a matter that
16 must be determined by the jury from the circumstances
17 surrounding the situation. There is no way to prove intent to
18 a mathematical certainty. There is no way medical science can
19 dissect a person's brain and determine what the person had in
20 mind, so the law says that criminal intent may be inferred
21 from the circumstances shown to have existed. This is how you
22 make a determination of whether or not the element requiring
23 intent was present. It is not necessary to establish intent
24 by direct and positive evidence, but intent may be established
25 by inference in the same way as any other fact by taking into

1 consideration the acts of the parties and all of the facts and
2 circumstances of the case.

3 Criminal intent is a mental state, a conscious
4 wrongdoing. It is up to you to determine what the Defendant
5 intended to do based on the circumstances shown to have
6 existed.

7 Criminal intent can arise from action or a failure to
8 act. It may arise from negligence, recklessness, or an
9 indifference to duty or to consequences that is considered by
10 the law to be the equivalent of criminal intent.

11 Now, mere presence at the scene is not sufficient to
12 prove someone guilty of a crime. A Defendant's presence where
13 a crime is being committed or mere association with a person
14 who commits a crime does not make a Defendant an accomplice or
15 an aider and abetter of the person committing the crime.

16 The burden is on the State to prove every element of the
17 crime charged. If you find, after reviewing all of the
18 evidence, that the State has proved that the Defendant was
19 only present at the scene of the crime, and that they have not
20 proved, beyond a reasonable doubt, any other participation in
21 the crime, then you must find the Defendant not guilty. The
22 law is that proof of at the scene of the crime is not
23 sufficient to find someone guilty.

24 The Defendant is charged with two counts of armed
25 robbery. I remind you that each indictment charges a separate

Charge

322

1 and distinct offense and you must decide each indictment
2 separately on the evidence and the law applicable to it,
3 uninfluenced by your decision as to the other indictment.

4 In order to prove the Defendant guilty of armed robbery,
5 the State must first prove beyond a reasonable doubt that the
6 Defendant took personal property from the person or presence
7 of another person.

8 Property is in the presence of a person if it is within
9 the person's reach, inspection, observation or control so that
10 the person could, if not overcome with violence or prevented
11 by fear, keep possession of the property.

12 The State must also prove beyond a reasonable doubt that
13 the Defendant carried the property away intending to
14 permanently deprive the owner of the property and to keep the
15 property for the Defendant's own use. The slightest removal
16 of the property or the complete possession of the property,
17 even for an instant, by the Defendant is sufficient to show a
18 taking and carrying away of the property. The taking and
19 carrying away of the property must have been done with
20 violence or by putting the owner of the property in fear of
21 violence.

22 Finally, the State must prove beyond a reasonable doubt
23 that the Defendant was armed with a deadly weapon during the
24 robbery. A deadly weapon is any article, instrument or
25 substance which is likely to cause death or great bodily harm.

1 Whether an instrument has been used as a deadly weapon depends
2 on the facts and circumstances of each case. A pistol is an
3 example of a deadly weapon, and a gun may be a deadly weapon
4 even though it is not operating.

5 The Defendant is also charged with assault and battery
6 with intent to kill. In order to prove the Defendant guilty
7 of assault and battery with intent to kill, the State must
8 prove beyond a reasonable doubt that the Defendant committed
9 an unlawful act of violent nature to the person of another
10 with malice aforethought.

11 An assault occurs when a person unlawfully attempts or
12 offers to commit a violent injury upon another person and has
13 the present ability to complete the attempted injury. An
14 assault is the intentional creation of a reasonable fear of
15 immediate bodily harm. It is not necessary that the
16 attempted injury or harm actually take place. For example, if
17 I walk up to you, and when we are within arm's length, I draw
18 back to hit you, that is an assault.

19 A battery is the unlawful touching of another person by a
20 person who has committed the assault. An unlawful touching
21 can be caused by a part of the accused's body or by any object
22 the accused puts in motion. A battery is the completion of
23 the assault by using or applying force to another person,
24 however slight, in a rude, angry or resentful manner without
25 legal justification for doing so. Using my earlier example,

Charge

324

1 if I carry through the assault by hitting you, then that is a
2 battery.

3 Malice is hatred, ill-will or hostility towards another
4 person. It is the intentional doing of a wrongful act without
5 just cause or excuse and with an intent to inflict an injury
6 or under circumstances that the law will infer an evil intent.

7 Malice aforethought does not require that malice exists
8 for any particular time before the act is committed, but
9 malice must exist in the mind of the Defendant just before and
10 at the time of the act or at the time the act is committed.
11 Therefore, there must be a combination of the previous evil
12 intent and the act.

13 Malice aforethought may be express or inferred. These
14 terms, "express" and "inferred" do not mean different kinds of
15 malice but merely the manner in which malice may be shown to
16 exist, that is either by direct evidence or by inference from
17 the facts and circumstances which are proved. Express malice
18 is shown when a person speaks words which express hatred or
19 ill will for another or when the person prepared beforehand to
20 do the act which was later accomplished; for example, lying in
21 wait for a person or any other acts of preparation going to
22 show that the deed was within the Defendant's mind would be
23 express malice. Malice may be inferred from conduct showing a
24 total disregard for human life. Inferred malice may also
25 arise when the deed is done with a deadly weapon. A deadly

1 weapon is an article, instrument or substance which is likely
2 to cause death or great bodily harm. Whether an instrument
3 has been used as a deadly weapon depends on the facts and
4 circumstances of each case. As I have previously stated, a
5 pistol is an example of a deadly weapon and a gun may be a
6 deadly weapon even if it is not operating. If facts are
7 proved beyond a reasonable doubt sufficient to raise an
8 inference of malice to your satisfaction this inference would
9 be simply an evidentiary fact to be considered by you along
10 with the other evidence in the case and you may give it the
11 weight you decide it should receive. A specific intent to
12 kill is not an element of assault and battery with intent to
13 kill, but there must be a general intent to commit serious
14 bodily injury. Intent means intending the result which
15 actually occurs, not accidentally or involuntarily. Intent
16 may be shown by acts and conduct of the Defendant and other
17 circumstances from which you may naturally and reasonably
18 infer intent. Evidence of the character of the assault, the
19 character of the instrument used, the manner in which it was
20 used, the purpose to be accomplished and the resulting wounds
21 or injuries may be considered in determining the intent with
22 which the assault was committed. Intent may be inferred when
23 it is demonstrated that the Defendant voluntarily and
24 willfully commits an act, the natural tendency of which is to
25 destroy another's life.

Charge

326

1 The Defendant is also charged with first degree burglary.
2 To prove the Defendant guilty of this crime, the State must
3 first prove beyond a reasonable doubt that the Defendant
4 entered a dwelling without consent. A dwelling is any
5 building or portion of a building in which a person ordinarily
6 sleeps. A building constructed as a dwelling that has never
7 been occupied cannot be considered a dwelling for purposes of
8 burglary, but a building is a dwelling even if the residents
9 are temporarily absent from the building.

10 In order to prove that the Defendant entered the
11 dwelling, the State does not have to show that the Defendant's
12 entire body entered the dwelling. The smallest entry is
13 sufficient. It may be any part of the body, such as a hand or
14 foot, or even an instrument, such as a hook or other
15 instrument. In addition, the State does not have to prove
16 that force was used to gain entry.

17 If a person enters a building by using deception,
18 artifice, trick or misrepresentation to get consent to enter,
19 this is an entry without consent.

20 Next, the State must prove beyond a reasonable doubt that
21 the Defendant intended to commit a crime, either a felony or a
22 misdemeanor, at the time of the entry. The mere entry into a
23 dwelling without consent is not burglary. If the intent to
24 commit a crime is formed after the entry, it is not a
25 burglary. On the other hand, if the Defendant intended to

1 commit a crime at the time of the entry, it is a burglary even
2 if the intent was abandoned after the entry. It does not
3 matter that the intended crime was not completed. Intent may
4 be shown by acts and conduct of the Defendant and other
5 circumstances from which you may naturally and reasonably
6 infer intent.

7 Finally, the State must prove beyond a reasonable doubt
8 one of the following: when entering, while in the dwelling,
9 or when fleeing, the Defendant or an accomplice was armed with
10 a deadly weapon or explosive. A deadly weapon is an article,
11 instrument or substance which is likely to cause death or
12 great bodily harm. Whether an instrument has been used as a
13 deadly weapon depends on the facts and circumstances of each
14 case; or when entering, while in the dwelling or when fleeing,
15 the Defendant or an accomplice caused physical injury to
16 another person not participating in the crime; or when
17 entering, while in the dwelling or when fleeing, the Defendant
18 or an accomplice used or threatened to use a dangerous object;
19 or when entering, while in the dwelling or when fleeing, the
20 Defendant or an accomplice displayed what was or appeared to
21 be a knife, a pistol, a revolver, a rifle, a shotgun, a
22 machine gun or other firearm; or the Defendant entered or
23 remained in the dwelling in the nighttime. Nighttime is the
24 period between sunset and sunrise during which there is not
25 enough daylight to recognize a person's face except by

Charge

328

1 artificial light or moonlight.

2 The Defendant is also charged with two counts of
3 kidnapping. To prove the Defendant guilty of kidnapping, the
4 State must prove beyond a reasonable doubt that the Defendant
5 knowingly and unlawfully seized, confined, inveigled, decoyed,
6 kidnapped, abducted or carried away another person without
7 authority of law. To do a thing unlawfully is to do it
8 willfully against the law. Knowingly means with knowledge,
9 consciously, not accidentally. Seize means to take hold of
10 suddenly or forcibly. Confine means to limit, restrict or
11 enforce within bounds, imprison or shut or keep in. Inveigle
12 means to lure, entice or lead astray by false representations,
13 promises or other deceitful means. Decoy means to lure by, or
14 as if by, decoy. A decoy is something to entice a person into
15 a trap. Kidnap is to remove a person against his or her will
16 by unlawful force or by fraud. Abduct means to carry off
17 secretly or by force or an illegal purpose. Carry away means
18 to remove.

19 The State does not have to prove that the Defendant did
20 all of these things. Instead, if you find beyond a reasonable
21 doubt that the Defendant did any of these things, you may find
22 the Defendant guilty of kidnapping.

23 Something done without authority of law is something
24 which the law does not sanction, permit, allow, condone or
25 provide justification for.

1 The kidnapping does not have to be for any personal or
2 monetary gain or for any illegal purpose, but may be for any
3 reason whatsoever.

4 The Defendant is also charged with possession of a weapon
5 during the commission of, during the commission of or attempt
6 to commit a violent crime. To prove the Defendant guilty of
7 this crime, the State must first prove beyond a reasonable
8 doubt that the Defendant was in possession of a firearm or
9 visibly displayed what appeared to be a firearm during the
10 commission of a violent crime. A firearm means any machine
11 gun, automatic rifle, revolver, pistol or any weapon which
12 will, is designed to or may be readily converted to expel a
13 projectile. In order to find the Defendant guilty of
14 possession of a weapon during the commission of a violent
15 crime, you must first find the Defendant guilty of either
16 committing a violent crime or attempting to commit a violent
17 crime. Armed robbery, assault and battery with intent to
18 kill, first degree burglary and kidnapping are each a violent
19 crime.

20 Now, there are two possible verdicts which you may find
21 for each indictment. No significance whatsoever is to be
22 given to the order in which I state these possible verdicts to
23 you. I simply must state one first and one second. The
24 possible verdicts for each indictment is either guilty or not
25 guilty. Ladies and gentlemen, your verdict for each

Charge

330

1 indictment must be a unanimous one. Mr. Foderaro, as
2 foreperson when the jury agrees on a verdict for each
3 indictment you will write that verdict below the verdict form
4 on each indictment when you reach a verdict for that
5 particular indictment, date, fill in the date of your decision
6 and sign your name as foreperson. At that time please knock
7 on the door and let the bailiff know that you have reached a
8 verdict for each indictment.

9 Now I'm going to send you back to the jury room, but
10 please do not begin your deliberations at this point in time.
11 I need to check with the attorneys to see if they have any
12 challenges to my instructions to you. If there are no
13 challenges or no challenges that I deem should be given to you
14 we will send all of the exhibits back to the jury room with a
15 copy of these instructions and the indictments and you will be
16 told by the bailiff at that time to begin your deliberations,
17 but please don't begin them until I tell you to do so.

18 All right, I'll excuse you back to the jury room.
19 Everyone else please remain seated while the jury is excused.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right, any challenges or exceptions to
23 the charge by the State?

24 MS. BAILEY: None, Your Honor.

25 THE COURT: Any by the Defense?

1 MR. FELTS: Just, just to renew my objection earlier
2 about the aiding and abetting portion.

3 THE COURT: All right, I understand your prior
4 objection. I deny that.

5 MR. FELTS: And the not adding spoliation of the
6 evidence charge.

7 THE COURT: All right, all right, and I deny that as
8 well.

9 All right, anything else?

10 MS. BAILEY: No, Your Honor.

11 THE COURT: All right, all right, let's come up and
12 make sure we've got all the exhibits together and then we will
13 send them back to the jury room. Here's a copy of the charges
14 and the indictments.

15 MR. FELTS: Just to be sure, Judge, about the verdict
16 forms they're just going to write on the back of the
17 indictment?

18 THE COURT: Each indictment they're going to write
19 either guilty or not guilty, yeah, all right.

20 (Exhibits reviewed by counsel for State and Defense and
21 approved.)

22 THE COURT: All right, here's the indictments and the
23 charges. Put that with it to go back.

24 MR. FELTS: Can we look at these real quick?

25 THE COURT: Yeah. All right, we got everything?

Charge

332

1 All right, if you want to go ahead and take that back to
2 the jury, tell them they can begin their deliberations and
3 you'll need to bring Mr. Vincent Wilson out.

4 (Whereupon, alternate dismissed by Court.)

5 THE COURT: All right, and we'll stand in recess until
6 or unless something - we hear from the jury or something comes
7 up; okay? All right.

8 (Deliberations begin at 2:45 p.m.)

9 OFF THE RECORD

10 (On the record.)

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 (Verdict reached at 4:22 p.m.)

14 THE COURT: Mr. Little, I understand the jury has
15 reached a verdict; is that correct?

16 BAILIFF: Yes, sir.

17 THE COURT: All right, anything from the State before
18 we bring the jury in?

19 MS. BAILEY: No, Your Honor.

20 THE COURT: Anything from the Defense?

21 MR. FELTS: No, sir, Your Honor.

22 THE COURT: All right, let's go ahead and bring the
23 jury in.

24 (Whereupon, the following takes place in the presence of
25 the jury.)

1 THE COURT: All right, ladies and gentlemen, welcome
2 back. Mr. Foderaro, I understand the jury has reached a
3 verdict; is that correct?

4 MR. FODERARO: Yes, sir.

5 THE COURT: As to all indictments?

6 MR. FODERARO: Yes, sir.

7 THE COURT: And have you placed those verdicts and
8 signed the verdicts on each indictment?

9 MR. FODERARO: Yes, sir.

10 THE COURT: All right, if you'd please hand the
11 indictments to the bailiff.

12 (Complies with request.)

13 THE COURT: Thank you, sir.

14 (Court reviews indictments.)

15 THE COURT: All right, I'll ask the clerk to please
16 publish the verdicts.

17 THE CLERK: Will the Defendant please stand?

18 (Complies with request.)

19 THE CLERK: Indictment number 2009-GS-22-00560, the
20 State versus Rondell Leon Carter, as to the charge of armed
21 robbery we, the jury, by unanimous consent, find the Defendant
22 guilty; 2009-GS-22-00561, the State versus Rondell Leon
23 Carter, as to the charge of armed robbery we, the jury, by
24 unanimous consent, find the Defendant guilty; 2009-GS-22-
25 00555, the State versus Rondell Leon Carter, to the charge of

Verdict

334

1 burglary first degree we, the jury, by unanimous decision,
2 find the Defendant guilty; 2009-GS-22-00559, the State versus
3 Rondell Leon Carter, to the charge of kidnapping we, the jury,
4 by unanimous consent, find the Defendant guilty; 2009-GS-22-
5 00556, the State versus Rondell Leon Carter, to the charge of
6 kidnapping we, the jury, by unanimous consent, find the
7 Defendant guilty; 2009-GS-22-00557, the State versus Rondell
8 Leon Carter, to the charge of possession of a weapon during
9 the commission of a violent crime, we, the jury, by unanimous
10 consent, find the Defendant guilty; 2011-GS-22-00645, the
11 State versus Rondell Leon Carter, to the charge of assault and
12 battery with intent to kill, we, the jury, by unanimous
13 consent, find the Defendant guilty.

14 THE COURT: All right, Mr. Foderaro, is that the
15 jury's verdict on each of these charges?

16 MR. FODERARO: Yes, sir.

17 THE COURT: All right, if each member of the jury
18 would indicate that this is their verdict by raising their
19 right hand; please.

20 (All jurors raise their right hand.)

21 THE COURT: All right, let the record show that all
22 jurors raised their hand.

23 Any polling of the jury by the Defense?

24 MR. FELTS: Yes, sir, Your Honor, please.

25 THE COURT: All right.

1 All right, ladies [sic], I'm going to poll the jury as to
2 your verdict. When I call your name if you would please stand
3 and I'm going to ask you two questions: number one, are these
4 your verdicts and number two, are these still your verdicts;
5 okay?

6 All right, Juror Number 66, Susan Duncan.

7 Ms. Duncan, are these your verdicts?

8 MS. DUNCAN: Yes, sir.

9 THE COURT: Are they still your verdicts?

10 MS. DUNCAN: Yes, sir.

11 THE COURT: Thank you.

12 Juror Number 50, Nathaniel Cooper, Jr.

13 Mr. Cooper, are these your verdicts?

14 MR. COOPER: Yes, sir.

15 THE COURT: Are they still your verdicts?

16 MR. COOPER: Yes, sir.

17 THE COURT: Thank you.

18 Juror Number 37, Jason S. Carraway.

19 Mr. Carraway, are these your verdicts?

20 MR. CARRAWAY: Yes, sir.

21 THE COURT: Are they still your verdicts?

22 MR. CARRAWAY: Yes, sir.

23 THE COURT: Thank you.

24 Juror Number 225, Renee H. Roberts.

25 Ms. Roberts, are these your verdicts?

Polling of Jury

336

1 MS. ROBERTS: Yes, sir.
2 THE COURT: Are they still your verdicts?
3 MS. ROBERTS: Yes, sir.
4 THE COURT: Thank you.
5 Juror Number 249, Josiah G. Stafford.
6 Mr. Stafford, are these your verdicts?
7 MR. STAFFORD: Yes, sir.
8 THE COURT: Are they still your verdicts?
9 MR. STAFFORD: Yes, sir.
10 THE COURT: Thank you.
11 Juror Number 2, Steve F. Alston.
12 Mr. Alston, are these your verdicts?
13 MR. ALSTON: Yes, sir.
14 THE COURT: Are they still your verdicts?
15 MR. ALSTON: Yes, sir.
16 THE COURT: Thank you.
17 Juror Number 238, Patty J. Seat.
18 Ms. Seat, are these your verdicts?
19 MS. SEAT: Yes, sir.
20 THE COURT: Are they still your verdicts?
21 MS. SEAT: Yes, sir.
22 THE COURT: Thank you.
23 Juror Number 292, Robert L. Winns.
24 Mr. Winns, are these your verdicts?
25 MR. WINNS: Yes, sir.

Polling of Jury

337

1 THE COURT: Are they still your verdicts?
2 MR. WINNS: Yes, sir.
3 THE COURT: Thank you.
4 Juror Number 124, Ethel N. Holden.
5 Ms. Holden, are these your verdicts?
6 MS. HOLDEN: Yes, sir.
7 THE COURT: Are they still your verdicts?
8 MS. HOLDEN: Yes, sir.
9 THE COURT: Thank you.
10 Juror Number 75, Albert E. Foderaro.
11 Are these your verdicts?
12 MR. FODERARO: Yes, sir.
13 THE COURT: Are they still your verdicts?
14 MR. FODERARO: Yes, sir.
15 THE COURT: Thank you.
16 Juror Number 140, Reginald A. Johnson.
17 Mr. Johnson, are these your verdicts?
18 MR. JOHNSON: Yes, sir.
19 THE COURT: Are they still your verdicts?
20 MR. JOHNSON: Yes, sir.
21 THE COURT: Thank you.
22 Juror Number 247, Eileen H. Snow.
23 Ms. Snow, are these your verdicts?
24 MS. SNOW: Yes, sir.
25 THE COURT: Are they still your verdicts?

Motions

338

1 MS. SNOW: Yes, sir.

2 THE COURT: Thank you very much.

3 All right, ladies and gentlemen of the jury, that
4 concludes your services not only in this case but for the
5 remainder of this week. We will not need a jury for any other
6 charges this week. So, you're free to go and I want to thank
7 you for your service. I'm going to ask if you'd please stay
8 in the jury room for just a brief moment so I can come back
9 and speak to you and thank you for your service. I like to do
10 that to jurors whenever I preside over a case. It won't be
11 too much longer. So, I'm going to excuse you back to the jury
12 room right now and I'll be with you in just a moment. Thank
13 you very much.

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right, any post-trial motions at this
17 time?

18 MR. FELTS: Yes, sir, Your Honor.

19 THE COURT: All right.

20 MR. FELTS: At this time unless the State's got
21 anything, Judge, but I'm happy to go whenever the Court's
22 ready.

23 THE COURT: Okay, does the State have any motions at
24 this time?

25 MS. BAILEY: None from, none from the State, Your

1 Honor.

2 THE COURT: All right, sir, let me hear from you.

3 MR. FELTS: Your Honor, at this time we move for a new
4 trial. In addition I would renew my motion for a mistrial
5 based on the reasons that I stated earlier on the record about
6 the evidence that I thought was improper regarding drug use
7 that my client may or may not have done, also renew all my
8 objections, the objections to the evidence as far as the chain
9 of custody and mishandling objections. Your Honor, I'd also
10 renew my objection to the State's defective life without
11 parole notice and renew my 403 objections to the picture of
12 the victim's injuries.

13 THE COURT: All right, all right, I'm going to deny
14 all of your motions. I find that they're sufficient, I don't
15 see there's any error. So, I'm going to deny all your
16 motions. Now, with the - not with the exception but what is
17 the life without parole, what is the prior most serious
18 conviction or two serious convictions?

19 MS. BAILEY: Your Honor, I have a certified conviction
20 that I'd like to get marked as a Court's Exhibit at the
21 appropriate time for voluntary manslaughter.

22 THE COURT: And is - that's classified as what a ---

23 MS. BAILEY: Most serious.

24 THE COURT: Most serious.

25 Let's go ahead and mark that - do we do that as a State's

Motions

340

1 Exhibit or as a Court's?

2 MS. BAILEY: Yes, Your Honor, as a ---

3 (Whereupon, State's Exhibit Numbers 39 marked. Please
4 see index for description of exhibit.)

5 MR. FELTS: Your Honor, that, that conviction ---

6 MS. BAILEY: Let me - I have packets. Let me hand
7 these out so we're all looking at the same thing.

8 THE COURT: All right, sounds good.

9 MS. BAILEY: In this packet is a copy of the certified
10 conviction along with a notice that was served on the
11 Defendant back in September of 2009.

12 THE COURT: Okay.

13 MS. BAILEY: I've also pulled a copy of the statute if
14 Your Honor wants to see it.

15 THE COURT: Okay, no, I see where it is classified as
16 a violent and most serious, all right.

17 MR. FELTS: Your Honor, I want to make sure that
18 voluntary was a most serious offense in 1995.

19 THE COURT: Okay, well, all I'm doing - I mean, I look
20 in - I'm looking on the strickler [spelled phonetically] that
21 says that it was a most serious. Let me see what I've got.
22 I've got the serious, most serious, all right, most serious
23 offenses, yeah, it's got Code Section 17-25-45(C) (1)
24 identifies voluntary manslaughter as a most serious offense.

25 MR. FELTS: I just want to make sure, Judge, that that

1 - it was classified that in 1995.

2 MS. BAILEY: Your Honor, I think the way that the
3 statute works it doesn't matter if it was classified that back
4 then. For instance if in another state he did a voluntary
5 manslaughter that wasn't classified as a voluntary
6 manslaughter in that state we could still use that as long as
7 the elements were the same. We could still use it as an
8 enhancement.

9 THE COURT: Yeah.

10 MS. BAILEY: As long as we prove to the Court that the
11 elements are the same.

12 THE COURT: Yeah, and I agree with you. I think, I
13 think it goes by the current classification, all right.

14 MR. FELTS: Note my objection to that for the record.

15 THE COURT: I note your objections. I deny it.

16 All right, any reason as to why we cannot go ahead and
17 impose sentence?

18 MS. BAILEY: No, Your Honor, I would just like to
19 incorporate by reference the - that the State has served
20 Rondell Carter with a notice of intent to seek life without
21 parole and that that was done in September of 2009 and it was
22 done on the record.

23 THE COURT: All right, and that was the exhibit you
24 just handed up?

25 MS. BAILEY: No, the exhibit that I - what I handed up

Sentencing

342

1 to you has not been placed into exhibits but I can do that,
2 the notice, the written notice.

3 THE COURT: Yeah, okay, all right, that's what I see.
4 You just handed that up to the Court but you haven't put it in
5 yet.

6 MS. BAILEY: Yes, that's correct.

7 THE COURT: Okay, all right, let's go ahead and - so,
8 that'll be State's Exhibit, State's Exhibit 40 admitted over
9 objection of the Defendant.

10 (Whereupon, State's Exhibit Numbers 40 marked. Please
11 see index for description of exhibit.)

12 THE COURT: All right, anything else?

13 MS. BAILEY: That's all from the State, Your Honor.

14 THE COURT: All right, anything at this time from the
15 Defense before I impose sentence?

16 MR. FELTS: Your Honor, as far as mitigation ---

17 THE COURT: Well, no, I'm going to give you an
18 opportunity to speak. Right now I just - is there any
19 objection to going ahead and taking up the sentencing issue at
20 this time?

21 MR. FELTS: No, sir, that's fine.

22 THE COURT: Okay, all right, Mr. Carter, if you'd
23 please stand.

24 (Complies with request.)

25 THE COURT: All right, Mr. Felts, anything in

1 mitigation?

2 MR. FELTS: Your Honor, my client is here. He has
3 exercised his constitutional right to a jury trial. He's
4 maintained his innocence in this matter since day one, and
5 Your Honor, he, he's got some family members that are here
6 that I don't know if they would like to speak or not but I
7 just want the record to reflect that he does have some family
8 members here.

9 THE COURT: All right.

10 MR. FELTS: He, he comes from a - I hate - I hesitate
11 to use the term difficult background but that's what it is,
12 Judge. He - his wife was murdered - excuse me, his mother was
13 murdered when he was at a very young age. Your Honor, I - you
14 know this was a difficult case and Mr. Carter is here. He's,
15 you know, been present. He knows what he's looking at, knows
16 what he's got to deal with and, Judge, I just ask, you know,
17 if you could give him any mercy that you do so and of course
18 if Mr. Carter would like to talk, you know, I'm not sure if he
19 wants to or not but at the appropriate time he will.

20 THE COURT: All right.

21 MR. FELTS: And if his family members, if they'd like
22 to say anything, Judge, I just ask that you hear from them.

23 THE COURT: All right, I'll hear from Mr. Carter and
24 anyone that wants to speak on his behalf.

25 MR. CARTER: No, sir, I'm straight.

Sentencing

344

1 THE COURT: Excuse me?

2 MR. CARTER: I don't want to speak.

3 THE COURT: All right, does anybody want to speak on
4 his behalf?

5 MR. FELTS: Yes, sir, Judge, yes, sir.

6 THE COURT: All right, if you'd please come forward,
7 speak into the microphone, give us your name.

8 MR. DEES: Sir, I would just like to ask that ---

9 THE COURT: I need your name first.

10 MR. DEES: Oh, my name is Willie Dees, I'm sorry.

11 THE COURT: All right, Mr. Dees.

12 MR. DEES: And I would like to ask that you all would
13 - the Court would have mercy on him, give him a chance to be
14 rehabilitated and return to society and just be a, be a
15 productive, you know, I'm sorry, again. As his lawyer said he
16 had a lot of tragedy in his life and I just pray that the
17 Court will give him a chance at life.

18 THE COURT: All right, thank you, sir, appreciate it.
19 Anyone else? Ma'am, your name?

20 MS. LEWIS: Yes, Your Honor, I'm his aunt and I would
21 just like to - I'm Mary Lewis.

22 THE COURT: All right, thank you, Ms. Lewis, go ahead.

23 MS. LEWIS: And I would like to ask you to please have
24 mercy, as much mercy as you can and give him a chance because
25 Rondell he had it, you know, come up without a mother, without

1 a father and I guess I don't know whether he's just lashing
2 out or what but I would pray that he could get some kind of
3 evaluation, something to help his - help him some and
4 strengthen him and I would pray and plead that you have mercy
5 on him, give him a chance that maybe that he could maybe
6 recoup himself.

7 THE COURT: All right, thank you, ma'am.

8 MS. LEWIS: Thank you.

9 THE COURT: Yes, ma'am, thank you. Anyone else?

10 (No reply.)

11 THE COURT: All right, Mr. Felts, anything further
12 from the Defense?

13 MR. FELTS: No, sir, Your Honor, just that you
14 exercise whatever mercy you're willing to do so. Thank you.

15 THE COURT: Thank you. Do the victims wish to speak?

16 MS. BAILEY: No, Your Honor.

17 THE COURT: All right, any other prior records?

18 MS. BAILEY: The prior record is the, the voluntary
19 manslaughter and an escape.

20 THE COURT: Okay.

21 MS. BAILEY: The escape was in '95.

22 THE COURT: All right.

23 MS. BAILEY: And Your Honor, I have sentencing sheets
24 to hand up to the Court.

25 THE COURT: All right, now, all of these except for

Sentencing

346

1 the possession of a firearm is a most serious; correct?

2 MS. BAILEY: Yes, Your Honor, and in the statute
3 section number where it says in violation of I add - I've
4 added the section for the most serious offense statute as well
5 so that the Department of Corrections can classify it
6 accordingly.

7 THE COURT: Okay.

8 MS. BAILEY: And there's the possession of a weapon
9 charge. The possession of a weapon, the possession of a
10 weapon charge carries five years mandatory unless the
11 Defendant is convicted of a life without parole and the
12 statute maybe is poorly worded. It just says that that five
13 years is not mandatory if he's convicted of life without
14 parole. The way I read it is then it becomes a zero to five.

15 THE COURT: Oh, okay, I see what you're saying.

16 Thank you. All right, all right, Mr. Carter, on the
17 charge of assault and battery with intent to kill, burglary in
18 the first degree, kidnapping, armed robbery, both counts of
19 kidnapping and both counts of armed robbery the sentence of
20 the Court is that you be confined to the State Department of
21 Corrections for life pursuant to the most serious conviction
22 enhancement statute. Likewise, possession of a firearm during
23 the commission of a violent crime the sentence of the Court is
24 that you be confined to the State Department of Corrections
25 for five years. The sentences will run concurrently, all

1 right.

2 MS. BAILEY: Thank you, Your Honor.

3 MR. FELTS: Thank you, Your Honor.

4 THE COURT: Thank you.

5 Anything further before we adjourn for the day?

6 MS. BAILEY: Nothing from the State.

7 THE COURT: All right.

8 MR. FELTS: Nothing from the Defense, Your Honor,

9 thank you.

10 THE COURT: All right.

11 (Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus Rondell Leon Carter, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on June 27 through 29, 2011.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L. Hurley, CVR-CM
Official Reporter

October 29, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONDELL CARTER,

APPELLANT

APPELLATE CASE NO. 2011-195627

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
ARGUMENT.....	5
CONCLUSION.....	8

TABLE OF AUTHORITIES

Cases

<u>Mitchell v. State</u> , 298 S.C. 186, 379 S.E. 2d 123 (1989)	6
<u>State v. Bolden</u> , 303 S.C. 41, 398 S.E. 2d 494 (1990)	7
<u>State v. Britt</u> , 235 S.C. 395, 111 S.E. 2d 669 (1959).....	7
<u>State v. Coleman</u> , 301 S.C. 57, 389 S.E. 2d 659 (1990)	7
<u>State v. Gamble</u> , 247 S.C. 214, 146 S.E. 2d 709 (1966).	6
<u>State v. Hough</u> , 325 S.C. 88, 480 S.E. 2d 77 (1997).....	7
<u>State v. Johnson</u> , 293 S.C. 321, 360 S.E. 2d 317 (1987).....	6
<u>State v. McElveen</u> , 280 S.C. 325, 313 S.E.2d 298 (1984).....	6
<u>State v. Peake</u> , 302 S.C. 378, 396 S.E. 2d 362 (1990)	7
<u>State v. Ross</u> , 272 S.C. 56, 249 S.E. 2d 159 (1978).....	6
<u>State v. Smith</u> , 309 S.C. 442, 424 S.E. 2d 496 (1992)	7
<u>State v. Swords</u> , 279 S.C. 554, 309 S.E.2d 750 (1983).....	6
<u>State v. Torrence</u> , 305 S.C. 45, 406 S.E. 2d 315 (1991).....	7

STATEMENT OF ISSUES ON APPEAL

Whether the trial court erred in refusing to grant a mistrial after the solicitor elicited testimony from one of the victims that appellant gave her marijuana because that testimony placed appellant's character into issue and was unduly prejudicial especially when no curative charge was given?

STATEMENT OF THE CASE

Appellant was convicted of burglary in the first degree, two counts of kidnapping, two counts of armed robbery, assault and battery with intent to kill, and possession of a firearm after a jury trial held before the Honorable Benjamin H. Culbertson, on June 27-29, 2011 in Georgetown County. Appellant was sentenced to life imprisonment on all charges except possession of a firearm in which he was sentenced to five years imprisonment. James R. Felts, IV, Esquire and Gerald E. Harmon, Esquire represented appellant.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a mistrial after the solicitor elicited testimony from one of the victims that appellant gave her marijuana because that testimony placed appellant's character into issue and was unduly prejudicial especially when no curative charge was given.

Appellant was indicted for first degree burglary for entering the dwelling of William Douglas on January 23, 2009. He was indicted for kidnapping William Douglas and Christina Carroll on the same date. He was indicted for the armed robbery of both William Douglas and Christina Carroll. He was indicted for assault and battery with intent to kill for shooting Christina Carroll and for possession of a weapon during the commission of a violent crime. Three co-defendants, Herman McCray, Robert Richardson, and Matthew Cobb were also involved. Herman McCray testified for the State. Rosa Milton and Jamie Powell were witnesses at the scene who testified along with William Douglas and Christina Carroll. Rosa Milton admitted on cross-examination to being a user of crack cocaine. (R. p. 30, line 21 -p. 31, line 9). Jamie Powell testified that she was currently incarcerated for drug paraphernalia charges. (R. p. 86, lines 3-9). She was staying at the Douglas residence. She had been asleep for the past twelve hours because she had been up the last three or four days using drugs. (R. p. 89, lines 4-13). She testified that Christina Carroll had just come home from rehab. (R. p. 92, line 15). On cross-examination she admitted the drug she was using was crack cocaine. (R. p. 98, lines 8-10).

Christina Carroll admitted that on the evening of the burglary she had just gotten back from Columbia from drug rehab. (R. p. 106, lines 4-15). After being hit over the head with a pistol and being shot in the leg, she was asked if she was in a lot of pain. She said,

"Yes." She was then asked if somebody offered her drugs. She said, "Yes." She was asked if she took them. She again said, "Yes." She was asked what kind. She replied, "I smoked weed and I was drinking alcohol." (R. p. 119, lines 12-19). The solicitor could not leave it there. Later, she asked how she got the marijuana. Ms. Carroll said the "suspects gave it to us." The solicitor asked which one. The answer was Rondell Carter, appellant. (R. p. 121, lines 17-22).

Defense counsel objected and said he had a matter to take up outside the presence of the jury. With the jury out, defense counsel said the testimony about the marijuana coming from his client was highly prejudicial, it was a bell that could not be un-rung, and he moved for a mistrial. (R. p. 121, line 23 – p. 122, line 12). The trial court said it was not going to grant a mistrial, it did think it was so prejudicial, and most of the drug use that was made part of the trial was brought out by the defense. (R. p. 123, lines 2-7). No curative charge was given to the jury. The trial court's ruling was in error.

In Mitchell v. State, 298 S.C. 186, 379 S.E. 2d 123 (1989) this Court wrote:

In a criminal case, the State cannot attack the character of the defendant unless the defendant herself first places her character in issue. State v. McElveen, 280 S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1983); State v. Gamble, 247 S.C. 214, 146 S.E. 2d 709 (1966). Further, evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person. State v. Johnson, 293 S.C. 321, 360 S.E. 2d 317 (1987). Counsel's failure to object to the introduction of this character evidence constituted ineffectiveness.

The Court has ruled before that "character evidence is so highly prejudicial that it is usually excluded under the fast rules." State v. Ross, 272 S.C. 56, 249 S.E. 2d 159 (1978),

citing State v. Britt, 235 S.C. 395, 111 S.E. 2d 669 (1959) overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E. 2d 315 (1991).

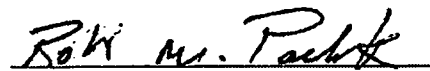
Testimony concerning extraneous drug usage or dealing has long been held to be reversible error. State v. Coleman, 301 S.C. 57, 389 S.E. 2d 659 (1990); State v. Peake, 302 S.C. 378, 396 S.E. 2d 362 (1990); State v. Bolden, 303 S.C. 41, 398 S.E. 2d 494 (1990); State v. Smith, 309 S.C. 442, 424 S.E. 2d 496 (1992); State v. Hough, 325 S.C. 88, 480 S.E. 2d 77 (1997).

Defense counsel had the right to cross-examine witnesses who took the stand about their use of drugs. The solicitor certainly did not object. Appellant in this case had not taken the stand and his character could not be placed into issue. Whether he distributed drugs to Christina Carroll was not relevant to the charges for which he was on trial. The solicitor deliberately brought out this testimony to prejudice appellant's case.

CONCLUSION

Appellant's conviction should be reversed and he should be given a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R.M. Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of November, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 2, 2012


Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONDELL CARTER,

APPELLANT

CERTIFICATE OF SERVICE

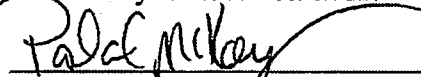
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blicht, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of November, 2012.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of November 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Georgetown)Rondell Leon Carter #238244)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2013 CP 220721

IN THE COURT OF COMMON PLEAS

ALMA Y. WHITE
CLERK OF COURT

2013 JUL 18 PM 2:55

FILED
GEORGETOWN COUNTY, S.C.

APPLICATION FOR

POST-CONVICTION RELIEF

~~2012 CP 220721~~INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correction Institution
2. Name and location of Court which imposed sentence Georgetown County Court House, S.C.
3. Name(s) of co-defendant(s) (if any) Herman McCray, Robert Richardson and Matthew Cobb
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2009-GS-22-00560, Armed Robbery, 2009-GS-22-00561, Arm Robbery.
 (b) 2009-GS-22-00555 burglary First degree, 2009-GS-22-00559, kidnapping
 (c) 2009-GS-22-00556, kidnapping, 2009-GS-22-00557, possession of a weapon, 2011-GS-22-00645, ABWTK.
5. The date upon which sentence was imposed and the terms of the sentence:

(a) JUNE 29, 2011(b) Life pursuant to the most serious conviction enhancement statute.

Possession of a Firearm during the commission of a Violent crime. Five years run concurrently.

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
I appeal from Judgment of Conviction.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirm
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 17, 18, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. internal citations omitted
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Improper chain of custody, Improper mishandling of evidence. 363
Evidence should of been excluded, Due to the fact that the evidence
custodian mishandle suppose to be evidence Improperly. No way was alleged
evidence suppose to be dropped off at the solicitor office and left by the
evidence custodian in the hands of Steve Brown her investigator and suppose
to be witness. The evidence was suppose to be dropped off at the Clerk of court
to be sign off on. (Rules for Georgetown Sheriff Department, ~~there~~ court
evidence custodian to do with evidence when bringing them to court for trial.

Ineffective Assistance of trial counsel. He was Ineffective for reflecting
the curative instruction when my character was place into issue and was highly
Prejudice after the Judge ask the jury to step out on a objection; then when
they return, the objection was never sustain are overrule on and the solicitor
move on to the next question; like the jury just suppose to forget the question.
Im sure they never forgot about the question about drugs that got them sent off.
That was a inflammatory statement and highly prejudice.

He also was Ineffective Due to the fact when the state had Rest its case and
they took me to the back to see if I wanted to testify. The first thing I ask
them can we call my suppose to be co-defendants Robert Richardson and matthew
Cobb to testify. They said yes, I also ask him can we call a suppose to be victim
thurmond seawood to the stand he said yes. but they talk me out of it, which they
would of bought no doubt a big Reasonable doubt to the jury; for the simple fact
I had letters from all three of them that they wrote me, that would of help my case
a great deal. Also in my co-defendants statement both of them said I shot the
victim. Also the suppose to be victim wrote a statement in my behalf that
would of cause Reasonable doubt, I gave all my evidence to my attorney. And des
them to put them on the stand. they talk me out of it, everybody was their to,

I feel he was also Ineffective Due to the fact he didnt object to the solicitor
using the hands of one hands of all law. when all my suppose to be co-defendants
denied having anything to do with the alleged crimes. All of them said I took
them there and pulled out a gun and made them do everything. That sound like
suppose to be victims to me. Also How can they use the hand of one hands of all
law, when all suppose to be co-defendants Plead out to 2nd degree
burglary before my trial and none of them pleaded to any of the charge I
was convicted of.

Impor, chain of custody,

- (a) Inadmissible, Improper mis handling of evidence
- (b) Ineffective Assistance of trial counsel
- (c) 403 objections to victim injuries, Improper Investigation, Improper testimony.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Answers on Reverse Side of this page. see Reverse
- (b) Side of page 2 and 3.
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

403 objection. pictures of Suppose victim should have been 365
Inadmissible due to the fact for one we don't know where they came
from and for two we don't know who that is on the picture. All you
can see is a picture of a forehead and a picture of a leg.

Improper investigation, being that the victims testified to the evidence
and said that was the alleged gun she was shot with. It Automatic was
supposed to be sent to SLED for testing. If she was shot with it, we don't
know if the gun even works. So how can they testify that that was the
gun used in the alleged crime. especially when the solicitor went on to seek
life without parole on me. It shouldn't have been no half stepping on the investi-
gation.

Improper admitting of testimony from investigator Michael Thacker,
shouldn't have been able to testify as to his opinion on why the evidence
wasn't sent for any fingerprint analysis or other test, when he wasn't the
lead investigator. The first time she ask him that question, my attorney
objected and the judge sustain it. The solicitor ask the question the
second time close to the same way when my attorney objected that
time. He overrule it and let him answer. when again there was no
foundation for that question.

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. 403 objection
- ii. Chain of custody and mishandling of evidence objection
- iii. Curative instruction that was not given to the Jury.
- (b) the proceedings in which each ground was raised:
- i. 403 objection and Chain of custody and mishandling evidence
- ii. was Raised the open motions. curative Instruction
- iii. was Raised During testimony of suppose witness.
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) The Ineffective of assistance trial Counsel was'nt
- (b) presented because I didn't have a chance to present
- (c) It then.
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. James R. Felts and Gerald E. Harmon, Georgetown S, c
- ii. They was my trial Attorney. Robert M. Pachak, Appellate
- iii. Defender, P.O. BOX 11589 Columbia, SC 29211-1589
- (b) the proceedings at which each such attorney represented you:
- i. James R. Felts and Gerald E. Harmon, trial Attorney.
- ii. Robert M. Pachak Appellate Defender.
- iii. _____
19. State clearly the relief you seek in filing this application:
Rightfully For my conviction to get over turn and I get a New trial
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
	)	
Rondell Leon Carter, #238244,	)	Case No. 2013-CP-22-00721
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed July 18, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In May 2009, the Georgetown County Grand Jury indicted Applicant for First Degree Burglary (2009-GS-22-555), Kidnapping (2009-GS-22-556), Possession of a Weapon (2009-GS-22-557), Kidnapping (2009-GS-22-559), Armed Robbery (2009-GS-22-560), and Armed Robbery (2009-GS-22-561). In June 2011, the Georgetown Grand Jury indicted Applicant for two (2) counts of Assault and Battery with Intent to Kill ("ABWIK") (2011-GS-22-645 and -701). James R. Felts, Esquire and Gerald E. Harmon, Esquire, represented Applicant. Applicant proceeded to trial on June 27, 2011, before the Honorable Benjamin H. Culbertson and a jury. Judge Culbertson granted Applicant's motion to quash one of the ABWIK indictments at the beginning of trial. On June 29, 2011, the jury found Applicant guilty as indicted on all remaining charges. Judge Culbertson sentenced Applicant to life in prison

pursuant to the South Carolina Code section 17-25-45 based on his prior voluntary manslaughter conviction.

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on April 17, 2013. State v. Carter, Op. No. 2013-UP-157 (S.C. Ct. App. filed April 17, 2013). The remittitur was returned to the circuit court on June 10, 2013.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Improper chain of custody"
2. "Inadmissible, Improper mishandling of evidence"
3. "Ineffective Assistance of trial counsel"
4. "403 objections to victim injuries, Improper Investigation, Improper testimony"

Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this Return and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such

that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent further submits Applicant's allegations regarding the chain of custody, handling of evidence, and trial objections should be dismissed. Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Applicant's allegations regarding the chain of custody, handling of evidence, and trial objections should be dismissed are direct appeal issues. Applicant's failure to raise these allegations on direct appeal forecloses him from raising them as grounds for relief in PCR. Therefore, Respondent requests these allegations be dismissed.

V.

Each and every allegation contained within the Application not hereinbefore expressly admitted, qualified, or explained is hereby denied.

VI.

WHEREFORE, having made its Return, Respondent requests an evidentiary hearing be held on those issues so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

2/27, 2014

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

2 COUNTY OF GEORGETOWN) NO: 2016-CP-22-00014

3 PCR HEARING

4 -----
5 B E F O R E: The Honorable G. Thomas Cooper
6 February 5, 2015
7 -----

8 RONDELL LEON CARTER,
9 Petitioner/Applicant,
10 vs.

 ORIGINAL

11 STATE OF SOUTH CAROLINA,
12 Respondent.
13 -----

14 APPEARANCES:

15 Tristan Shaffer, Esq.
16 For the Petitioner.

17 Joshua Thomas, Esq.
18 For the Respondent.

19
20
21 Court Reporter:
22 Natalie Dahl, RPR
23
24
25

1 I-N-D-E-X

2 APPLICANT'S WITNESSES

3 JAMES FELTS

4 Direct Examination by Mr. Shaffer..... 4
5 Cross-Examination by Mr. Thomas..... 9
6 Redirect Examination by Mr. Shaffer..... 15

7 RONDELL CARTER

8 Direct Examination by Mr. Shaffer..... 16
9 Cross-Examination by Mr. Thomas..... 22
10 Redirect Examination by Mr. Shaffer..... 23

11 RESPONDENT'S WITNESSES

12 JAMES FELTS

13 Direct Examination by Mr. Thomas..... 23
14 Redirect Examination by Mr. Shaffer..... 24

15 E-X-H-I-B-I-T-S

16

17 EXHIBITS

MARKED & ADMITTED

18 (NO EXHIBITS MARKED)

19

20

21

22

23

24

25

CALL OF THE CASE

P-R-O-C-E-E-D-I-N-G-S

1
2 THE COURT: Who is your first case?

3 MR. THOMAS: Rondell Carter.

4 MR. SHAFFER: May we approach briefly?

5 THE COURT: Sure.

6 (Whereupon, a bench conference was had.)

7 THE COURT: Mr. Thomas, you may proceed.

8 MR. THOMAS: This is Rondell Carter versus State
9 of South Carolina. It is Case No. 2013-CP-22-721. It
10 is a May 2009 indictment for burglary first degree,
11 two counts of kidnapping, two counts of armed robbery,
12 possession of a weapon during the commission of a
13 violent crime, and assault and battery with intent to
14 kill. He also was indicted June of 2011 for a second
15 assault and battery with intent to kill, but at trial
16 that indictment got quashed. He was represented by
17 Gerald Harmon and James Felts, went to trial on
18 June 27th through 29th of 2011 and was convicted as
19 indicted of burglary first, kidnapping, armed robbery
20 possession of a weapon and the single ABWIK. Judge
21 Culbertson gave him life without parole on all of
22 those charges, except for the possession of a weapon,
23 which was five years, all of those to run current, and
24 that was based on Mr. Carter's prior voluntary
25 manslaughter conviction, so under the lascivious

JAMES FELTS - DIRECT EXAMINATION

1 statute.

2 Robert Pachek (phonetic), at Appellant Defense,
3 did file an appeal. Court of Appeals affirmed the
4 conviction in unpublished Case 2013-UP-157. He filed
5 this PCR in July 2013 alleging various allegations,
6 matters of ineffective assistance of counsel. He is
7 present in the courtroom represented by Tristan
8 Shaffer, and I would turn it over to his attorney.

9 THE COURT: Mr. Shaffer.

10 MR. SHAFFER: Thank you, Your Honor. Applicant
11 would call James Felts to the stand.

12 (JAMES FELTS, having been duly sworn,
13 testified as follows:)

14 DIRECT-EXAMINATION

15 BY MR. SHAFFER:

16 Q How are you doing?

17 A Good morning. I'm good.

18 Q You represented Rondell Carter?

19 A That's correct.

20 Q Were you appointed or retained?

21 A Appointed.

22 Q At what point did you get appointed to the case;
23 do you recall?

24 A Do you mean when?

25 Q Yeah, approximately.

JAMES FELTS - DIRECT EXAMINATION

1 A Sometime in early 2011, as I recall.

2 Specifically, it was -- the Public Defender's Office
3 had it originally, maybe Eric Fox, Stuart Axelrod, one
4 of those folks, and we inherited the case by conflict
5 or otherwise.

6 Q When you inherited the case, was there already an
7 LWOP notice in effect?

8 A As I recall, yes.

9 Q Tell us about the allegations against him.

10 A As far as the facts surrounding the case?

11 Q That's correct.

12 A Well, we know on the record what the charges are.
13 As far as I recall, there was a group of individuals
14 that were in Pleasant Hill area of Georgetown County
15 involved in some sort of drug party, et cetera, et
16 cetera, and it was alleged that Mr. Carter was a part
17 of the party, either supplying drugs or ingesting
18 drugs, what have you, and at some point in the night,
19 one of the witnesses there -- witness, slash,
20 victims -- was shot in the leg. It was said that was
21 done by Mr. Carter. Another individual was pistol
22 whipped, as I recall, and had a large injury in their
23 forehead. I don't know if that was the same one that
24 got shot in the leg. Later, either the next day -- I
25 believe it was the next day -- Mr. Carter supposedly

JAMES FELTS - DIRECT EXAMINATION

1 took one of the other people, one of the victims, out
2 from the location that everybody was in and rode him
3 around looking for money, either to buy more drugs or
4 maybe that person owed Mr. Carter some money. They
5 went to 521 mini mart, which is about half way between
6 Andrews and Georgetown, stopped there to try to cash a
7 check, and when they were in there, somehow law
8 enforcement was alerted that there was a kidnapping, or
9 that person that Mr. Carter was with was being held
10 against his will, and shortly thereafter Georgetown
11 Sheriff's Office apprehended Mr. Carter.

12 Q Okay. And what was your plan to defend against
13 this case?

14 A Well, as is typical, my plan, in general, for
15 criminal cases, at least review the evidence, try to
16 figure out if there is a way we can work out a plea,
17 and if not, then try the case, if that is what the deal
18 is.

19 Q Did you engage in plea negotiations?

20 A I did.

21 Q And was there a plea offer in this case?

22 A There was.

23 Q What was the offer? What was the best offer?

24 A What's that now?

25 Q What was the best offer you got?

JAMES FELTS - DIRECT EXAMINATION

1 A If I recall correctly, it was 12 years on
2 burglary second, violent, maybe.

3 Q And that was fairly close to the trial?

4 A Yeah. Yeah. But it was -- it wasn't the day of.
5 There was time -- it was made before trial.

6 Q Okay. And did you discuss that with Mr. Carter?

7 A I did at length.

8 Q And what did he say in response?

9 A He said he didn't want to do it.

10 Q Okay. Whenever you went into trial, what was
11 your strategy at the trial?

12 A The strategy, as I recall, was to, again, kind
13 of -- like in any criminal case you try to poke holes
14 in the State's case as best we could, expose bias on
15 some of the witnesses, because as I recall, witnesses
16 and codefendants, mind you, either had prior records,
17 were drug abusers and had credibility issues all the
18 way around, so we did our best to expose that in front
19 of the jury.

20 Q And there were also testifying codefendants in
21 this case?

22 A That's right.

23 Q Do you recall -- to my recollection, only one of
24 them testified; is that right?

25 A That's right. I think that's right.

JAMES FELTS - DIRECT EXAMINATION

1 Q And did Mr. Carter ever ask you to call
2 additional witnesses?

3 A I don't think so. I know we discussed putting up
4 any evidence at length, but I don't recall being --
5 trying to call witnesses.

6 Q Now, Herman McCray was the testifying
7 codefendant, correct? Do you disagree with that?

8 A I'm sorry, I have a cold. Yeah, but I want to
9 say that maybe a Matthew Kyle testified.

10 Q He was certainly one of the codefendants?

11 A Absolutely.

12 Q Mr. McCray, during his testimony at least, he had
13 already pled guilty, correct?

14 A I believe that's correct.

15 Q Did you bring out what he had -- you brought out
16 what he pled guilty to, correct?

17 A As far as I can remember, yes.

18 Q Do you recall bringing out specifically what his
19 sentence was at the time?

20 A What I do remember was that he had not been
21 sentenced at that point, as is often customary with the
22 Solicitor's Office. They don't sentence the testifying
23 codefendants before trial. They wait until after the
24 trial.

25 Q Did you attempt to bring out the range of

JAMES FELTS - CROSS-EXAMINATION

1 sentence that he would likely get, or how much time he
2 was facing before he took the deal?

3 A I don't recall. It is possible that I did, and
4 specifically you know on cross-examination.

5 Q Yes.

6 A I can't say if I did or didn't.

7 MR. SHAFFER: No further questions at this time.

8 CROSS-EXAMINATION

9 BY MR. THOMAS:

10 Q Mr. Felts, briefly some background information.
11 How long were you practicing law when you tried this
12 case?

13 A I was sworn in in November of 2004, and I believe
14 this case was tried in summer of 2011, so almost seven
15 years.

16 Q Did you file the standard Brady discovery
17 motions?

18 A I did.

19 Q And did you get -- do you think you got a full
20 response back from the State on those?

21 A I believe I did.

22 Q Did you get an opportunity to share that with
23 Mr. Carter?

24 A I did.

25 Q How many meetings did you have with him?

JAMES FELTS - CROSS-EXAMINATION

1 A I can't tell you exactly, but I know it was
2 numerous, and we met on several occasions, either at
3 Georgetown Detention Center and at J. Reuben Long
4 Detention Center in Horry County.

5 Q Do you think you had enough time to meet with him
6 to be prepared for trial?

7 A I believe I did.

8 Q During all of these meetings, safe to say you
9 explained to him the charges he was facing, the
10 elements of those defenses?

11 A That's correct.

12 Q And did you get an opportunity to discuss with
13 him his version of events?

14 A Yes.

15 Q And that was essentially there was sort of a wild
16 night of partying that got out of hand?

17 A That's correct.

18 Q Did he give you any sort of investigation he
19 wanted you to do, leads, anybody he wanted you to talk
20 to?

21 A I don't recall.

22 Q Did you get a chance to speak with any of the
23 codefendants before trial, or were they all
24 represented?

25 A They were all represented.

JAMES FELTS - CROSS-EXAMINATION

1 Q Did you talk to their attorneys at least a little
2 bit?

3 A I did.

4 Q So did you get --

5 A I explained to Mr. Carter the defense to this.

6 Q What did you tell him the defense was?

7 A Something to the effect that the State would have
8 difficulty moving their case, or if there was any
9 difficulty that the State would have, it would be
10 because of the witnesses' credibility, the testifying
11 codefendants.

12 Q So that was basically your trial strategy, was to
13 poke holes in all of their testimony, discredit them?

14 A That's correct. Because everybody showed up to
15 testify. There really wasn't -- you know, as I recall
16 there weren't any missing witnesses, for the most part.
17 The folks, as I recall, that showed up pretty much had
18 similar stories.

19 Q Along those lines, you did cross-examination
20 basically on their criminal histories, drug use and
21 things like that?

22 A Correct.

23 Q Is there anything else you think you could have
24 discredited them any more than you did?

25 A You know it's possible that different questions

JAMES FELTS - CROSS-EXAMINATION

1 could have been asked, sure. There is absolutely other
2 questions I could have asked to really bring out
3 additional bias perhaps, as far as testifying
4 codefendants, maybe with regard to range of sentences,
5 et cetera, but there probably will always be that.

6 Q But at the end of the day, their stories were all
7 consistent in terms of Mr. Carter's behavior that
8 night?

9 A As I recall, yes.

10 Q You made a couple pretrial motions in this case.
11 One of them was basically there was a bag of evidence
12 that kind of showed up at the last minute?

13 A Yes.

14 Q Briefly, tell us what your objection was and what
15 happened to that?

16 A The day of trial, as I recall, there was a bag of
17 evidence, like you just said, that had the firearm, a
18 bandanna, maybe some shell casings that were all
19 gathered at the scene -- either gathered at the scene
20 or taken from Mr. Carter. That material showed up the
21 day of trial in a bag via the assistant solicitor who
22 was trying the case. To the best of my knowledge, that
23 happened because either the Solicitor's investigator
24 got that bag from the Sheriff's evidence, custodian and
25 transported it to the trial. We didn't really like

JAMES FELTS - CROSS-EXAMINATION

1 that. The appearance of perhaps impropriety, and as I
2 recall, we wanted to exclude that evidence because,
3 obviously, it was very prejudicial to the case, but
4 additionally we felt at the time it was improperly
5 handled as far as -- the better plan in my mind would
6 have been had the custodian show up with the evidence,
7 as is usual and customary, as opposed to handing it
8 over to the Solicitor or investigator and have them
9 haul it to court. If there needed to be a chain of
10 custody, it would have been broken or an additional
11 link could have been added. It appeared improper and
12 we were going to do everything we could at that time to
13 make sure we didn't leave any stone unturned, and that
14 was the reason.

15 Q Obviously, Judge Culbertson denied your motion on
16 those grounds?

17 A He did.

18 Q I'll jump around, I apologize. During the charge
19 conference you asked the judge to take out charges on
20 accomplice liability?

21 A As I recall, yes, sir.

22 Q And you objected to the charge and renewed that
23 objection after the charge?

24 A As I recall, yes.

25 Q Did you ever -- did Mr. Carter ever tell you that

JAMES FELTS - CROSS-EXAMINATION

1 he wanted you to put up a case in his defense? Did he
2 give you any specific witnesses he wanted to call,
3 anything like that?

4 A If he did, I don't remember. I'm not saying he
5 didn't, I just don't remember.

6 Q But you remember having lengthy discussions with
7 that?

8 A We definitely discussed his decision to testify,
9 but as far as calling other witnesses or putting up
10 other witnesses or evidence, I don't recall
11 specifically. I know that we did discuss him
12 testifying.

13 Q If he had told you that he wanted witnesses, what
14 would you have done? Would you have had then
15 subpoenaed, brought them to court?

16 A I feel like I would have. I feel like it, unless
17 there was some sort of reason not to.

18 Q There was conflicting testimony at trial whether
19 Mr. Carter shot the female victim, or whether he
20 instructed one of the codefendants to shoot the victim;
21 there were two different stories at trial, weren't
22 there?

23 A Yeah, I remember that.

24 Q There was no -- they didn't present a forensic
25 expert to try to link the shell casings to the gun,

JAMES FELTS - REDIRECT EXAMINATION

1 though?

2 A No. They had the evidence custodian, as I
3 recall, testify about the shell casings, and as I
4 recall, which gun they came from. But as far as -- I
5 don't recall any sort of expert to discuss ballistics
6 or any sorts of firearm forensic information.

7 MR. THOMAS: Thank you. That is all I have.

8 THE COURT: Redirect?

9 REDIRECT-EXAMINATION

10 BY MR. SHAFFER:

11 Q You objected to the hand-of-one-hand-of-all
12 charge, correct?

13 A I believe that's right, yes, sir.

14 Q And are you aware of whether the appellant court
15 addressed that issue or whether they brought that issue
16 up?

17 A I'm not.

18 MR. SHAFFER: No further questions.

19 THE COURT: You may come down. Thank you very
20 much.

21 MR. SHAFFER: I would call Rondell Carter.

22 THE COURT: Come around, Mr. Carter.

23 (RONDELL CARTER, having been duly sworn,
24 testified as follows:)

25

RONDELL CARTER - DIRECT EXAMINATION

1 DIRECT-EXAMINATION

2 BY MR. SHAFFER:

3 Q Mr. Carter, where are you from?

4 A Georgetown, South Carolina.

5 Q And where are you currently residing at?

6 A Lee County Corrections.

7 Q What is your current status?

8 A Life sentence, no parole.

9 Q And that was due to the enhancement based off of
10 the prior conviction?

11 A Yes, sir.

12 Q Who was your first attorney in this case?

13 A Mr. Fox, Eric Fox.

14 Q Approximately how long after you being arrested
15 did Mr. Felts take over as your attorney?

16 A About -- I'd say probably about a year later,
17 year-and-a-half later.

18 Q How many times did you meet with Mr. Felts or Mr.
19 Harmon?

20 A About two times.

21 Q And what sort of strategy did you want them to
22 proceed with for the trial?

23 A As far as we was trying -- we was trying to
24 present the best strategy we can.

25 Q You told him what?

RONDELL CARTER - DIRECT EXAMINATION

1 A Told him I didn't do it, so we were trying to
2 present the best strategy we can.

3 Q And there was a plea offer in your case, correct?

4 A Yes, sir.

5 Q And why did you not accept the plea offer?

6 A Because I didn't -- you know what I'm saying, I
7 didn't do what they say I did.

8 Q Now, did you want them to call any witnesses in
9 your case?

10 A Yes, sir.

11 Q What witnesses did you want them to call?

12 A The victim, Thurman C. Wood and Matthew Cobb, my
13 codefendant.

14 Q And Mr. Cobb, why did you want him to testify?

15 A Because of the fact they can say that I told him
16 to shoot her -- I mean that I told him to shoot her,
17 and he's saying in his statement that I didn't. And
18 the victim that they said I told him to shoot, she said
19 that I shot her, you know what I'm saying. But in her
20 statement a year later, she's saying that he shot her,
21 I told him to shoot her; do you know what I'm saying?
22 And Mr. William, in his first statement, he's saying I
23 told him to shoot her, and in the second statement, you
24 know what I'm saying, he's saying he didn't know who
25 shot her.

RONDELL CARTER - DIRECT EXAMINATION

1 Q So it's safe to say that he was inconsistent with
2 your other codefendant and one of the victims?

3 A Yes, sir.

4 Q Why did you want to call the other victim?

5 A Because he was at the scene of the accident and
6 scene of the crime, and he left and he wrote the
7 statement on behalf of me that I gave to Mr. Felts.

8 Q But what did he write?

9 A He told him -- he told him that -- that
10 Mr. William -- you know what I'm saying, me and him
11 talked on the phone and he knew that I was going to be
12 at the house when he got there, you know what I'm
13 saying? They gave to the house, they did what they did
14 and left, and after that, he didn't know what happened.

15 Q Okay. Now, your codefendants pled guilty during
16 your trial, correct?

17 A Yes, that is what I was told by Mr. Felts before
18 my trial, that they pleaded out.

19 Q Okay. Do you think that he brought that out
20 sufficiently?

21 A No, he didn't bring that out at all when
22 Mr. McCray took the stand.

23 Q And in his closing argument he attempted to bring
24 it out?

25 A Yeah, that's because the Solicitor told the jury

RONDELL CARTER - DIRECT EXAMINATION

1 that, you know what I'm saying, Matthew Cobb, Herman
2 McCray, and the other one right now they're in court,
3 but right now we're worried about Rondell Carter, you
4 know what I'm saying? And he came back and said --

5 Q "He" being Mr. Felts?

6 A Yeah. Mr. Felts came back and said, No, I
7 disagree with that because they seen it in court
8 already and they pleaded out already.

9 Q And the Solicitor objected?

10 A Yes, she objected to that.

11 Q What would you have wanted him to do relating to
12 the codefendants?

13 A Well -- what else?

14 Q What would you want him to present relating to
15 them pleading guilty?

16 A When they brought in the hand-of-one-hand-of-all
17 charge, you know what I'm saying, I don't know -- you
18 know what I'm saying, they took time for -- they
19 pleaded to --

20 Q They plead to a lesser offense?

21 A Yes, sir, and got six years, and they got me on
22 trial for all of these charges.

23 Q Now, you had asked me about raising an issue
24 related to the chain of custody?

25 A Yes, sir.

RONDELL CARTER - DIRECT EXAMINATION

1 Q Your trial attorneys raised the issue related to
2 chain of custody?

3 A Sir?

4 Q Your trial attorneys objected to the chain of
5 custody involving the shell casings, right?

6 A Yes. Yes, sir.

7 Q And the gun?

8 A Yes, sir.

9 Q Why did you want me to raise that issue? Because
10 they already raised it at trial, why did you think that
11 that was a PCR issue?

12 A It is a PCR issue because -- because -- due to
13 the fact, you know what I'm saying, the Solicitor, when
14 I turned -- turned over to Mr. Steve Brown, he had it
15 from 9 o'clock that morning, you know what I'm saying,
16 to 1 o'clock when they brought it to trial, you know
17 what I'm saying? They could have showed the victims,
18 you know what I'm saying, to testify to, because they
19 had it at the Solicitor's Office. So they could have
20 shown, you know what I'm saying, the victims with --
21 they wanted them to testify to, you know what I'm
22 saying? And the policy for the Georgetown Department
23 is, you know what I'm saying, when evidence is leaving
24 the department, bring it to the courthouse and let the
25 clerk of court sign off on it, and the clerk of court

RONDELL CARTER - DIRECT EXAMINATION

1 bring it to court. That is Georgetown's rules and
2 policy, and he turned it over to Mr. Steve Brown, and
3 Mr. Steve Brown was supposed to be a potential witness
4 for the State. So he turned it over to a potential
5 witness, the evidence, which my lawyer did not bring up
6 in the Court of Appeals.

7 Q Okay. Now, until that, there was some perjured
8 testimony introduced?

9 A Yes, sir.

10 Q Why would you think that there is perjured
11 testimony? Was it inconsistent testimony, or why do
12 you think it was perjured?

13 A Due to the fact Matthew Cobb saying I -- that he
14 didn't shoot, you know what I'm saying, that he didn't
15 shoot Christina, he never touched a black gun, but shot
16 himself with a smaller gun, you know what I'm saying, a
17 25 gun, you know what I'm saying? They showing the
18 jury a 380 saying he shot himself with this gun trying
19 to shoot her.

20 Q And they also find a 25 shell casing at the
21 scene?

22 A Yeah.

23 Q Did anyone testify at your trial that there were
24 multiple guns?

25 A No.

RONDELL CARTER - CROSS-EXAMINATION

1 Q Other than what we've discussed so far, are there
2 any other allegations that you specifically wanted to
3 raise today? I know I didn't spell them out exactly
4 like you had them, but we can expand on that later.

5 A No, sir, you brought them all out.

6 MR. SHAFFER: Thank you very much.

7 THE COURT: Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. THOMAS:

10 Q Mr. Carter, how many -- you said you had a couple
11 of meetings with your attorneys?

12 A Yes, sir.

13 Q But during those meetings they explained to you
14 the elements of everything you were facing; you
15 understood what charges you were facing, didn't you?

16 A Yes, sir.

17 Q And they went over with you the discovery, all of
18 those statements that you were talking about, they
19 shared all of that with you, didn't they?

20 A Yes, sir.

21 Q And you said you got a chance to tell them,
22 basically, your version, which was you didn't do this,
23 that all of these witnesses were lying?

24 A Yes, sir.

25 Q And they explained that that would be the trial

JAMES FELTS - DIRECT EXAMINATION

1 strategy if you went to trial, to sort of discredit
2 these witnesses and try to show that those witnesses
3 were lying?

4 A Yes, sir.

5 Q And you said it was your decision to reject that
6 plea offer?

7 A Yes, sir.

8 MR. THOMAS: Thank you. That is all I have.

9 THE COURT: Redirect?

10 REDIRECT-EXAMINATION

11 BY MR. SHAFFER:

12 Q Why did you reject the plea offer?

13 A Because I didn't do it. I was not guilty of them
14 charges.

15 MR. SHAFFER: Thank you. No further questions.

16 THE COURT: Sir, you may come down, thank you.

17 MR. SHAFFER: Applicant rests, Your Honor.

18 MR. THOMAS: Your Honor, the State would call

19 Mr. Felts back to the stand for a brief --

20 THE COURT: All right. He's still under oath.

21 DIRECT-EXAMINATION

22 BY MR. THOMAS:

23 Q Mr. Felts, did you review the statements by that
24 Mr. Thurman?

25 A I did.

JAMES FELTS - CROSS-EXAMINATION

1 Q Why didn't you call him as a witness at trial?

2 A I believe the State called him as a witness. If
3 I recall, if my memory serves me correctly, I spoke to
4 Mr. Stewart actually in my office and he was very
5 non-committal about giving any information that Mr.
6 Carter wanted to give -- or wanted him to give. If I
7 recall correctly, he was the same at trial. He was
8 there for the trial, if I recall. I want to say he
9 testified as a State's witness, but maybe I'm wrong
10 about it.

11 Q His name was Thurman Stewart?

12 A Yes.

13 Q If I told you he didn't testify, is there a
14 reason why you didn't call him back up?

15 A He did testify?

16 Q He did not.

17 A He did not testify? I don't know why, other
18 than, like I said, he was very non-committal and he
19 wouldn't -- he -- when I met with him -- and, again, to
20 the best of my recollection his testimony wasn't going
21 to be what Mr. Carter thought it was going to be.

22 MR. THOMAS: Thank you.

23 CROSS-EXAMINATION

24 BY MR. SHAFFER:

25 Q What did Mr. Carter want it to be, or what did he

JAMES FELTS - CROSS-EXAMINATION

1 say it would be?

2 A If I recall correctly, something to the effect of
3 -- well, supporting Mr. Carter's version of events, he
4 didn't have anything to do with it.

5 Q What did he tell you in the office?

6 A What Mr. Stewart told me?

7 Q Yeah.

8 A I don't remember specifically other than he was
9 -- he was -- quite frankly, I was surprised he showed
10 up at my office. I think he thought I was the police.
11 He wouldn't tell me much, and he wouldn't commit to
12 very much. He was very, very shifty, would not ever --
13 he would go off on tangents on unrelated things and
14 never really told me anything. That is the best of my
15 recollection. I could be wrong. I thought he -- I
16 could have sworn he testified in this case.

17 MR. SHAFFER: No further questions.

18 MR. THOMAS: No redirect. That is all from the
19 State. We ask that Mr. Felts to be excused.

20 THE COURT: Without objection.

21 MR. THOMAS: That is all.

22 THE COURT: Counsel, proposed orders in 30 days.

23 (WHEREUPON, the proceedings concluded.)

24

25

CERTIFICATE OF REPORTER

State of South Carolina)

County of Georgetown)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the matter of the captioned case, relative to appeal, in the Court of Common Pleas for Georgetown County, South Carolina, on the 5th day of February, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 21, 2017

A handwritten signature in cursive script that reads "Natalie Dahl, RPR". The signature is written over a horizontal line.

Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Rondell L. Carter, #238244,)

Case No. 2013-CP-22-00721

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

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This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 18, 2013. Respondent made a timely Return on or about February 27, 2014. The Court convened an evidentiary hearing into the matter on February 5, 2015, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, James R. Felts IV, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In May 2009, the Georgetown County Grand Jury indicted Applicant for first degree burglary (2009-GS-22-555),

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two counts of kidnapping (2009-GS-22-556, -559), possession of a weapon during the commission of a violent crime (2009-GS-22-557), and two counts of armed robbery (2009-GS-22-560, -561). In June 2011, the Georgetown Grand Jury indicted Applicant for two counts of assault and battery with intent to kill ("ABWIK") (2011-GS-22-645, -701). James R. Felts IV, Esquire ("trial counsel") and Gerald E. Harmon, Esquire, represented Applicant. On June 27, 2011, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. Judge Culbertson granted Applicant's motion to quash one of the ABWIK indictments at the beginning of trial. On June 29, 2011, the jury found Applicant guilty as indicted on all remaining charges. Judge Culbertson sentenced Applicant to life in prison pursuant to the South Carolina Code section 17-25-45¹ based on his prior voluntary manslaughter conviction.

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on April 17, 2013. State v. Carter, Op. No. 2013-UP-157 (S.C. Ct. App. filed April 17, 2013). The Court of Appeals returned the remittitur to the circuit court on June 10, 2013.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Improper chain of custody"
2. "Inadmissible, Improper mishandling of evidence"
3. "Ineffective Assistance of trial counsel"
4. "403 objections to victim injuries, Improper Investigation, Improper

¹ South Carolina's recidivist statute requires a sentence of life imprisonment for a person convicted of a second "most serious offense." S.C. Code Ann. § 17-25-45(A)(1). Voluntary manslaughter, first degree burglary, ABWIK, and kidnapping are all most serious offenses. S. C. Code Ann. § 17-25-45(C)(1).

GR 42

testimony”

At the evidentiary hearing, Applicant proceeded on the following allegations:

1. Ineffective Assistance of Trial counsel.
 - a. Failure to call Thurmond Seward and Matthew Cobb as defense witnesses.
 - b. Failure to cross-examine Herman McCray on his plea deal.
2. Ineffective Assistance of Appellate Counsel.
 - a. Failure to argue the trial judge erred in instructing the jury on accomplice liability.
 - b. Failure to argue the trial judge erred in admitting evidence without a sufficient chain of custody.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Generally, the Court finds trial counsel’s testimony credible and Applicant’s not credible. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Trial counsel testified he was appointed to represent Applicant after the State served Applicant with its notice to seek life without parole. He recalled having several meetings with Applicant and discussing the charges and evidence against him. Trial counsel testified Applicant claimed he did not commit the crimes the State accused him of committing, and insisted this was merely a night of drinking and drug use that got out of control. Trial counsel testified his trial strategy based on these conversations was to attempt to discredit the State’s witnesses. He recalled several witnesses had prior records and histories of drug abuse.



Trial counsel recalled speaking to the co-defendants' attorneys about their clients' testimonies. Trial counsel testified the stories of all the witnesses were fairly consistent. He recalled there being a discrepancy on who shot one of the victims, and he recalled that discrepancy being brought out at trial. Trial counsel also recalled interviewing Thurmond Seward in his office. He recalled Seward's testimony would not have been helpful to Applicant at trial because he waivered in his recollection of events and could not provide the information Applicant hoped he could provide. Trial counsel did not recall Applicant asking him to investigate any further witnesses. He recalled thoroughly attacking the credibility of the witnesses on cross-examination. However, trial counsel also admitted he may not have fully cross-examined Herman McCray on his plea deal.

Trial counsel testified he made an objection to the admission of most of the physical evidence because it was in the possession of the solicitor prior to trial, instead of in the possession of law enforcement, as is the standard practice. However, he recalled there was no forensic testing done on the evidence. Trial counsel also testified he objected to the judge's instruction on accomplice liability.

Applicant testified he met with trial counsel only twice. He did recall reviewing the charges and the State's evidence in these meetings. Applicant testified he explained to trial counsel that he did not commit the crimes as the State alleged. Applicant testified trial counsel should have called Seward and Cobb to testify because they would have corroborated his version of events. Applicant testified trial counsel failed to fully cross-examine McCray on the sentence he would receive in exchange for his testimony. Applicant alleged appellate counsel did not raise issues related to the chain of custody of the physical evidence or the judge's jury charge.



B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where Applicant alleges ineffective assistance of trial counsel as a ground for relief, he must prove trial counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

GT 5

1. Failure to call Thurmond Seward and Matthew Cobb as defense witnesses.

The Court finds Applicant failed to meet his burden to show trial counsel ineffective for failing to call Seward and Cobb as witnesses. Regarding this allegation, the Court finds trial counsel's testimony credible and finds Applicant's testimony not credible. Trial counsel interviewed Seward and did not believe his testimony would be beneficial to Applicant. Accordingly, he has demonstrated a valid, strategic reason for not calling Seward as a witness. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Trial counsel reviewed Cobb's statements and discussed Cobb's testimony with Cobb's attorney prior to trial. He testified he would have called Cobb as a witness if he thought Cobb would have been helpful. Accordingly, the Court must presume Counsel made a strategic decision, based on his investigation, to not call Cobb in Applicant's defense. Id. Furthermore, Applicant seems to allege Cobb would have provided conflicting testimony regarding who shot one of the victims. Because the jury was already presented with this conflicting testimony, trial counsel had no reason to present Cobb for this purpose. See Jackson v. State, 329 S.C. 345, 351, 495 S.E.2d 768, 771 (1998) (applicant failed to show counsel deficient for failing to call a witness where that witness's testimony was presented thorough other witnesses).

Regardless, neither Seward nor Cobb testified at the evidentiary hearing. Therefore, the Court cannot speculate as to whether their testimony at trial would have been beneficial to Applicant. Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at

G26

trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence.” (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))). Accordingly, the Court finds Applicant has not demonstrated trial counsel’s performance fell below a reasonable standard or that he was prejudiced by trial counsel’s performance.

2. Failure to cross-examine Herman McCray on his plea deal.

The Court finds Applicant failed to demonstrate trial counsel ineffective for failing to further impeach McCray. McCray testified to the terms of his plea deal on direct. (Trial Tr. p. 244, line 17-p. 245, line 3). Trial counsel cross-examined McCray on his plea and his proffer agreement. (Trial Tr. p. 245, line 23-p. 247, line 20). Applicant alleges trial counsel should have also inquired about the sentencing range McCray was facing for his plea. However, the Court fails to discern how further questioning on McCray’s sentence would have further discredited his testimony. In light of trial counsel’s thorough cross-examination of McCray, the Court finds Applicant has not demonstrated how further impeachment would have changed the result of his trial. See, e.g., Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997) (“[O]ne can only speculate whether a ‘better’ cross examination would have helped Skeen.”); Simpson v. Moore, 367 S.C. 587, 598 n.2, 627 S.E.2d 701, 707 n.2 (2006) (“Though hindsight may provide a different view of counsel’s actions, Simpson is not entitled to a new trial for the sole purpose of presenting a ‘fancier’ case.” (citing Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998))). Accordingly, the Court finds trial counsel was not ineffective in this regard.

C. Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 396 (1985). “However, appellate counsel is not required to raise every

67-7

non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 526; Strickland, 466 U.S. at 687. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the Court must examine the record to determine “whether appellate counsel failed to present significant and obvious issues on appeal.” Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Furthermore, Applicant must prove prejudice by showing “there is a reasonable probability he would have prevailed on appeal.” Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003) (citations omitted).

1. Failure to argue the trial judge erred in instructing the jury on accomplice liability.

The Court finds Applicant failed to meet his burden of showing ineffective assistance of appellate counsel for failing to challenge the trial judge's accomplice liability instruction. Initially, the Court notes Applicant failed to present any testimony from appellate counsel on this issue. As such, the Court cannot speculate as to why certain issues were not briefed and must presume appellate counsel strategically chose what issues to brief. Cf. Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, without a witness's testimony, “any finding of prejudice is merely speculative”); see also Collins v. State, 686 S.E.2d 305, 308 (Ga.

2009) (“[D]uring the hearing, Collins's appellate counsel did not ask trial counsel about the decision not to call Malcom as a witness, “and the decision not to do so is therefore presumed to be a strategic one that does not amount to ineffective assistance.” (citations omitted)).

Regardless, Applicant has not demonstrated he would have been successful had appellate counsel challenged the judge's jury instruction. Applicant argues the trial judge erred in charging the jury on accomplice liability. However, the trial judge was required to instruct the jury based on the evidence presented at trial. State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (citing State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999)). The testimony at trial overwhelmingly indicates Applicant was the leader of the party that committed these crimes. Two witnesses testified Applicant ordered a co-defendant to shoot one of the victims. (Trial Tr. p. 212, lines 20-21; p. 1923, lines 7-9). Thus, there was evidence Applicant was acting in concert with the co-defendants to commit the armed robberies, kidnappings, and ABWIK, even though he may not have personally committed some of the acts constituting the crimes. Therefore, the trial judge properly instructed the jury on accomplice liability. Id. at 296, 534 S.E.2d at 269. Because the jury instruction was proper, Applicant has not shown he would have been successful had appellate counsel raised this issue on appeal. Anderson, 354 S.C. at 434, 581 S.E.2d at 835.

2. Failure to argue the trial judge erred in admitting evidence without a sufficient chain of custody.

The Court finds Applicant failed to meet his burden of showing appellate counsel ineffective for failing to brief a chain of custody issue. Again, the Court notes Applicant failed to present any testimony from appellate counsel on this issue, and the Court will presume

62-9

appellate counsel strategically chose to not brief this issue. Dempsey, 363 S.C. at 370, 610 S.E.2d at 815; Collins, 686 S.E.2d at 308.

Regardless, the Court also finds Applicant has not demonstrated this issue would have proven successful on appeal. The mere fact the physical evidence was in the possession of the solicitor prior to trial does not make the evidence inadmissible. Several witnesses testified the evidence was what it purported to be. State v. Glenn, 328 S.C. 300, 305, 492 S.E.2d 393, 395 (Ct. App. 1997) ("While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence-that is, evidence that is unique and identifiable-the establishment of a strict chain of custody is not required[.]"); Thus, any issues regarding the chain of custody go to the weight of the evidence, not its admissibility. See, e.g., State v. Wells, 336 S.C. 223, 230, 426 S.E.2d 814, 817 (Ct. App. 1992) overruled on other grounds by Burgess v. State, 329 S.C. 88, 495 S.E.2d 445 (1998) (allowing admission of clothes evidence despite defects in chain of custody, especially where there was no forensic evidence related to the clothes). Because the evidence was properly admitted, Applicant has not shown he would have been successful had appellate counsel raised this issue on appeal. Anderson, 354 S.C. at 434, 581 S.E.2d at 835.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from his attorney's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his attorney must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 27 day of April, 2015.


THE HONORABLE G. THOMAS COOPER, JR.
Presiding Judge

Cawson, South Carolina

FORM 5

STATE OF SOUTH CAROLINA

County of GeorgetownRondell Leon Carter #238244
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2016-CP-22-00014

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2016 JAN -6 P 2:28
CLERK OF COURT
ALMA Y. WHITE
GEORGETOWN COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE County Correction Inst.
2. Name and location of Court which imposed sentence Georgetown Court of General Session - Georgetown S.C.
3. Name(s) of co-defendant(s) (if any) Robert Richardson, Matthew Cobb, Hermon McCree
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Not Known 2009-GS-22-555, 2009-GS-22-551
 - (b) 2009-GS-22-557, 2009-GS-22-559, 2009-GS-22-560,

- (c) 2009-GS-22-561 and 2011-GS-22-645
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 29, 2011
- (b) Life Sentence
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of appeals
- ii. Georgetown County General Session
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. Denied
- iii. _____
- (c) the date of each such result:
- i. April of 2013
- ii. May of 2015
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Not known
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective of P.C.R. Counsel, under the Austin Claim
- (b) Ineffective of Trial Counsel, Ineffective of Appellate
- (c) Counsel; and Prosecution Misconduct.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) ON the back of this page
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Georgetown Circuit Court
- ii. Georgetown S.C.
- iii. _____
- iv. _____

Ineffective of PCR Attorney Due to the Fact
that he wrote me a letter (5) months after the Judge
order denying my PCR Application, which he said in
the letter he don't know why an appeal wasn't done in
a timely manner but you might can file an Austin Claim.

For b and C, Its the same Issues that was Raise in my
First P.C.R hearing. Also all the grounds was sent with my
First P.C.R Application, I don't have my property Right Now, but
If possible you can go back to my first Application.

(c) the disposition thereof:

- i. Dont Know
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Dont Know
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Ineffective of trial Counse
- ii. Ineffective of Appelant Counse
- iii. prosecution m.sconduct

(b) the proceedings in which each ground was raised:

- i. P.C.R. Hearings
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. James Felts
 ii. Robert Puchak / Appellant Division
 iii. Tristan Shaffer
4701 Oleander Drive, Myrtle Beach S.C 29577
 (b) the proceedings at which each such attorney represented you:
 i. Trial lawyer / James Felts
 ii. Appellate lawyer / Robert Puchak
 iii. P.C.R. hearings / Tristan Shaffer

19. State clearly the relief you seek in filing this application:

I would like to have a new P.C.R. hearing under the Austin
claim. I would like to be able to reconstruct P.C.R
Record due to my P.C.R. Ineffectiveness and move to the next
Court.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of Georgetown

VERIFICATION

I, Rondell Leon Carter #238244, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Rondell Carter
Rondell Carter

SWORN to and subscribed before me this 18th
 day of Nov, 2015.

Darwin Pringle (L.S.)
 Notary Public

My Commission Expires: 9/27/2023

FILED
 GEORGETOWN COUNTY, SC
 2016 JAN -6 P 2:28
 ALAN J. WHITE
 CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Rondell Carter #238244, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Rondell Carter
Applicant

SWORN or affirmed to and subscribed before me this
18th day of Nov, 2015.

Rondell Carter

Dennis Pangle
Notary Public

My Commission Expires: 9/27/2023

FILED
FORSTOWN COUNTY, S.C.
2016 JAN -6 P 2:28
ALMA J. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
) IN THE COURT OF COMMON PLEAS
) OF THE FIFTEENTH JUDICIAL CIRCUIT

Rondell Leon Carter, #238244,) 2016-CP-22-0014
))

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

**RETURN AND PARTIAL
MOTION TO DISMISS**

FILED
GEORGETOWN COUNTY, SC
2017 FEB 15 AM 11:57
ALMA Y WHITE
CLERK OF COURT

The Respondent, making its Return to the Application for Post-Conviction Relief filed January 6, 2016, would respectfully show this Court:

I.

Rondell Leon Carter ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In May 2009, the Georgetown County Grand Jury indicted Applicant for burglary, first degree (2009-GS-22-555), two counts of kidnapping (2009-GS-22-556, -559), possession of a weapon (2009-GS-22-557), and two counts of armed robbery (2009-GS-22-560, -561). In June 2011, the Georgetown Grand Jury indicted Applicant for two counts of assault and battery with intent to kill ("ABWIK") (2011-GS-22-645, -701). James R. Felts, Esquire and Gerald E. Harmon, Esquire, represented Applicant.

Applicant proceeded to trial on June 27, 2011, before the Honorable Benjamin H. Culbertson and a jury. Judge Culbertson granted Applicant's motion to quash one of the ABWIK indictments (2011-GS-22-701) at the beginning of trial. On June 29, 2011, the jury found Applicant guilty as indicted on all remaining charges. Judge Culbertson sentenced

Applicant to life in prison pursuant to the South Carolina Code section 17-25-45 based on his prior voluntary manslaughter conviction.

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on April 17, 2013. State v. Carter, Op. No. 2013-UP-157 (S.C. Ct. App. filed April 17, 2013). The remittitur was returned to the circuit court on June 10, 2013.

First PCR Application: 2013-CP-22-0721

Applicant filed his first PCR application on July 18, 2013, alleging the following grounds for relief:

1. "Improper chain of custody"
2. "Inadmissible, Improper mishandling of evidence"
3. "Ineffective Assistance of trial counsel"
4. "403 objections to victim injuries, Improper Investigation, Improper testimony"

An evidentiary hearing was held on February 5, 2015 at the Georgetown County Courthouse. Tristan M. Shaffer, Esquire, represented Applicant. At the evidentiary hearing, Applicant proceeded on the following allegations:

1. Ineffective Assistance of Trial counsel.
 - a. Failure to call Thurmond Seward and Matthew Cobb as defense witnesses.
 - b. Failure to cross-examine Herman McCray on his plea deal.
2. Ineffective Assistance of Appellate Counsel.
 - a. Failure to argue the trial judge erred in instructing the jury on accomplice liability.
 - b. Failure to argue the trial judge erred in admitting evidence without a sufficient chain of custody.

The Honorable G. Thomas Cooper, Jr. denied and dismissed the application with prejudice in an order signed April 27, 2015 and filed May 14, 2015. Applicant did not appeal Judge Cooper's order.

II.

Applicant filed his *second* and current application on January 6, 2016, alleging the following grounds for relief:

1. Ineffective assistance of PCR counsel, in that:
 - a. Counsel failed to file an appeal from 1st PCR.
2. Ineffective assistance of trial counsel, in that:
 - a. "its [sic] the same issues that was raised in my first P.C.R. hearing."
3. Ineffective assistance of appellate counsel, in that:
 - a. "its [sic] the same issues that was raised in my first P.C.R. hearing."
4. Prosecutorial misconduct, in that:
 - a. "its [sic] the same issues that was raised in my first P.C.R. hearing."

Attached herewith and incorporated herein by reference are the records of the Horry County Clerk of Court regarding the subject's convictions, Applicant's records from the Department of Corrections, appellate records, Applicant's trial transcript, prior PCR records and records from the current action. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant alleges he was denied the right to an appeal from the denial of his first PCR application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent lacks sufficient information to admit or deny this allegation. Therefore, Respondent requests an evidentiary hearing solely on this ground for relief. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

As to any and all other issues, the Respondent submits they should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offenses he challenges in this Application on June 29, 2011 and the remittitur from his appeal was sent by the South Carolina Court of Appeals on June 10, 2013. Applicant was therefore required to file his application before June 10, 2014. This Application was filed on January 6, 2016, which was beyond the time the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

As to any and all other issues, the Respondent submits they should be dismissed because the current application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the Respondent moves for a summary dismissal of the application because it is successive.

VI.

Additionally, this Court should dismiss Applicant's allegations of ineffective assistance of trial counsel and ineffective assistance of appellate counsel as barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

Applicant had a full opportunity to litigate all claims regarding ineffective assistance of counsel in his prior PCR action which was denied and dismissed with prejudice after a hearing over sixteen years ago. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCP, the Court should summarily dismiss these claims as barred by *res judicata*.

VII.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRCP. All claims should be made well in advance of the PCR hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Filings by Applicant will not be considered at the PCR hearing.

VIII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

X.

WHEREFORE, Respondent requests an evidentiary hearing *solely* to address the issue of whether counsel was ineffective in failing to appeal the order denying Applicant's initial application for post-conviction relief. Respondent further moves to summarily dismiss additional claims for being successive to Applicant's previous PCR application, failure to file within the statute of limitations and are barred by the doctrine of *res judicata*.

Respectfully submitted,

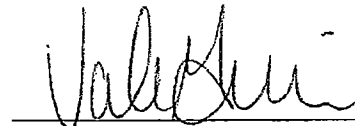
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

February 13, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

RONDELL L. CARTER, 238244,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2016-CP-22-0014

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. James K. Falk, Esquire
 Falk Law Firm, LLC
 PO Box 1058
 Charleston, SC 29402

DATED this 13th day of February, 2017.

FILED
 GEORGETOWN COUNTY, S.C.
 2017 FEB 15 AM 11:57
 ALMA Y. STAFF
 CLERK OF COURT



Mallory Morris, Legal Assistant
 For Respondent

1 State of South Carolina) Court of Common Pleas
2 County of Horry) 2016-CP-22-00014

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5 Rondell Leon Carter)

6 vs.)

7 State of South Carolina) Transcript of Record

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May 23rd, 2017
Conway, South Carolina

BEFORE:

Honorable Roger E. Henderson, Judge.

APPEARANCES:

James K. Falk, Esq.

Attorney for the Applicant

Johnny E. James, Jr., Esq.

Attorney for the State

Teresa J. F. Bautz, RPR

Official Court Reporter

1 E X H I B I T S

2 NO.	DESCRIPTION	ID	EV

3 No exhibits submitted.			

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21 Exhibits retained by Clerk of Court.			

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1 (The hearing commenced at approximately
2 12:24 p.m.)

3 THE COURT: Mr. James.

4 MR. JAMES: Your Honor, if it may please the
5 Court, this is the case of Rondell Leon Carter versus
6 State of South Carolina, docket number 2016-CP-22-0014.
7 Mr. Carter is presently confined in the South Carolina
8 Department of Corrections pursuant to orders of
9 commitment of the Georgetown County Clerk of Court. In
10 May 2009 the Georgetown County -- I apologize, Your
11 Honor, I've lost my place.

12 THE COURT: All right.

13 MR. JAMES: The Georgetown County Grand Jury
14 indicted Applicant for burglary in the first degree,
15 two counts of kidnapping, possession of a weapon and
16 two counts of armed robbery. They thereafter
17 additionally indicted him in June of 2011 for two
18 counts of assault and battery with intent to kill.

19 James R. Phelps, Esquire and Gerald E. Harmon,
20 Esquire represented Mr. Carter. Applicant proceeded to
21 trial on June 27, 2011 before the Honorable Benjamin H.
22 Culbertson and a jury wherein he was convicted on all
23 but one of the indictments, that being the assault and
24 battery with intent to kill. Judge Culbertson
25 sentenced Mr. Carter to life in prison pursuant to

1 Carolina Code Section 17-25-45.

2 Mr. Carter thereafter filed his first application
3 for post conviction relief on July 18, 2013, and that
4 was 2013-CP-22-0721. In that post conviction relief
5 action, he was represented by Tristan M. Shaffer,
6 Esquire. They proceeded to an evidentiary hearing
7 before the Honorable G. Thomas Cooper, Jr., on
8 February 5th, 2015, where Mr. Carter's allegations and
9 application was denied and dismissed with prejudice and
10 an order signed April 27, 2015 and filed May 14, 2015.
11 This application for relief followed.

12 In this application for relief, Mr. Carter alleges
13 a variety of issues. Primarily he seeks relief
14 pursuant to Austin v. State in that he alleges that his
15 prior PCR counsel failed to file an appeal from that
16 first PCR. He further alleges ineffective assistance
17 of trial counsel, ineffective assistance of appellate
18 counsel and prosecutorial misconduct.

19 As to those three issues, Your Honor, the State
20 respectfully submits that they are procedurally barred
21 by the statute of limitations, that they are barred as
22 successive, and that they are barred by the Doctrine of
23 Res Judicata. He had every opportunity to raise those
24 allegations in his prior PCR action, and therefore he
25 cannot raise them again in this one.

1 As to the allegation pursuant to Austin Versus
2 State, on Friday afternoon, this proceeding Friday, the
3 State received an affidavit from prior PCR counsel
4 Tristan Shaffer indicating that he was not aware of any
5 knowing waiver by Mr. Carter as to his appellate review
6 rights and that he had indeed failed to file the notice
7 of appeal and that he had no reason to justify that
8 failure filing the notice of appeal.

9 Therefore, strictly as to Mr. Carter's claim
10 pursuant to Austin v. State, the State concedes that he
11 should receive Austin relief. But it is also the
12 State's understanding that there may be some additional
13 concern from the Applicant in these matters.

14 This PCR was filed January 6th, 2016. Mr. Carter
15 is present and is represented by James K. Falk,
16 Esquire. Your Honor, the State cedes the floor to
17 opposing counsel.

18 THE COURT: Okay.

19 MR. FALK: Your Honor, Mr. Carter asserts that
20 there was ineffective assistance of PCR counsel and
21 that possibly that this would be an exception to the
22 rules or at least to the law that has sort of been
23 crafted between the decisions. And I believe you
24 pronounced the case AICE, A-I-C-E, which is 409 S.E.
25 2d 392.

1 The statute refers to -- the statute says, citing
2 17-27-90, South Carolina Code 17-27-90, it discusses
3 the limitation in filing subsequent or filing
4 subsequent claims. And I cannot file a PCR application
5 to secure relief for claims unless the Court finds a
6 good grounds for relief asserted which for sufficient
7 reason was not asserted or was inadequately raised in
8 the original or supplemental or amended application.

9 And I think the decision they made sort of looks
10 at a very restricted view of what sufficient reason for
11 not asserting the ground. But my client asserts a
12 ground that is not just at the fact that the issue
13 wasn't raised, he feels that he never really got the
14 right bite at the apple because his appellate counsel
15 failed to prepare the -- at the end of the hearing it's
16 my understanding that the PCR judge asked that both
17 counsel prepare proposed orders and have 30 days to
18 file.

19 And I think there's probably an understanding that
20 sort of at the end of a PCR hearing the judge either
21 sort of rules from the bench, rules that day, or asks
22 for each side to submit proposed orders, which somewhat
23 means that he wants to reflect on points of law
24 addressed by both sides.

25 And he feels that Mr. Shaffer's failure to prepare

1 that proposed order is -- really has affected his bite
2 at the apple, so to speak. And he believes that one of
3 the issues that was raised at the trial was ineffective
4 assistance of trial counsel, that his trial counsel
5 failed to cross-examine the Codefendant, Herman McCray,
6 on his plea deal.

7 And that's clearly marked in the trial transcript
8 where -- I mean, it's hard to show a negative, but the
9 point is that when you look at the cross-examination by
10 Mr. McCray, there's no mention that there was a plea
11 deal. But if you read the rest of the transcript, you
12 can see that. As I said, excuse me, there was no
13 mention that he had a plea deal.

14 And certainly in a case like that, being able to
15 bring to the jury's attention the bias of a witness is
16 certainly, or motivation to plead -- or motivation to
17 testify, would certainly be something that the jury
18 needed to know about.

19 The second item which he alleges is prosecutorial
20 misconduct and whether or not it was sufficiently
21 argued at the PCR hearing. I don't know because I
22 don't have the transcript. But he said that the
23 solicitor in that case misled the jury in her closing
24 argument when she said that the codefendants will have
25 their day in court. This is a case where there were, I

1 guess, possibly three people, two codefendants. And
2 when she made that argument that they would have their
3 day in court, she already knew that they had already
4 pled guilty and they had -- so they were not going to
5 court again.

6 And, again, I think the notion is the prejudice
7 that the jury would feel is if -- I think he thinks the
8 jury should certainly have been entitled to know what
9 the disposition of his Codefendants' cases were before
10 his case went to the jury. That was something that
11 trial counsel did not object to during the closing
12 argument. That's what he places the prosecutorial
13 misconduct.

14 Without looking at the transcript, I do not know
15 if the issue has been -- we need a transcript of the
16 PCR hearing, I guess, to know if the issue was
17 preserved. And that's where we are today.

18 THE COURT: Yes, sir, Mr. James?

19 MR. JAMES: Your Honor, as I previously indicated,
20 as to the allegations outside of Austin, on Applicant's
21 own application on, I believe, the back side of page
22 three, so it would be page four in the packet that is
23 in front of you, he indicates that his allegations
24 aside from that seeking Austin relief are, quote, "the
25 same issues that was raised in my first PCR hearing."

1 They are therefore barred by the Doctrine of Res
2 Judicata. And for that proposition I refer the Court
3 to Foxworth v. State, that is 275 SC 615, or in the
4 alternative 274 S.E. 2d 415, and that is a 1981 case
5 indicating that res judicata does in fact apply to post
6 conviction relief proceedings.

7 I would also, again, state that this is very
8 plainly successive in the same vein that it is barred
9 by res judicata. As to the allegation that these
10 arguments were not sufficiently raised in his prior PCR
11 proceeding, that is very simply not cognizable in a
12 post conviction relief action. The Court has stated in
13 no uncertain terms that the first PCR contemplates a --
14 quote, "contemplates an adjudication on the merits of
15 the original petition and is one bite at the apple."

16 Your Honor, the Court also noted that finality
17 must be realized at some point in order to achieve a
18 semblance of effectiveness in dispensing justice. Your
19 Honor, the number of issues and allegations that can be
20 developed to challenge the effectiveness of prior
21 counsel is limited only by the imagination and the
22 competence of an attorney.

23 Therefore, Your Honor, the State respectfully
24 requests that as to the allegation outside of his
25 request for Austin relief, that those allegations be

1 denied and dismissed.

2 THE COURT: Anything else, Mr. Falk?

3 MR. FALK: My client is indicating that he would
4 like to testify. I'm not sure if we're going forward
5 if he -- we have anything to testify for.

6 THE COURT: I did not intend on taking any
7 testimony based on what we discussed prior to calling
8 Mr. Carter out. I mean, the State has conceded that
9 he's entitled to the relief under Austin. That's
10 basically what he's seeking.

11 I agree with the State that, I mean, res judicata
12 does apply. I mean, he's filed an application, he's
13 proceeded with a post conviction relief application
14 which has been ruled on. Now, whether or not he, you
15 know, was innovative enough to think of everything or
16 his attorney, that's neither here nor there now, that
17 ship sailed.

18 So there's no point in taking any testimony at
19 this point in time from Mr. Carter. I mean, I'm
20 granting him what he wants, what he's seeking. I'm not
21 granting it, the State's conceded to it and I'll put my
22 stamp on it.

23 MR. FALK: And so if he gets his appeal, then
24 there will be a Court to review whether or not his
25 PCR was --

1 THE COURT: Sure, yeah. He'll get his appeal, and
2 he can raise those issues with, you know, his appeal,
3 if he's granted an appeal. So in a sense he'll be able
4 to be heard.

5 What do you want to say, Mr. Carter?

6 THE APPLICANT: Sir, I have to -- at the end of my
7 trial Judge Cooper gave Mr. Shaffer 30 days to do a
8 proposal. I know if he would have did that proposal, I
9 wouldn't be here right now. I just want to explain
10 five minutes, it won't take me five minutes.

11 THE COURT: That's not before me today, you know,
12 that's not the issue before me today. So the issue
13 before me today is whether or not you're entitled to
14 relief under Austin v. State, and I'm giving you the
15 relief. You know, and you'll get that and you can
16 raise this with your, you know, attorney.

17 THE APPLICANT: Yes, sir. I appreciate that.

18 THE COURT: He'll advise you appropriately.

19 THE APPLICANT: Yes, sir, appreciate it.

20 THE COURT: Okay, thank you. Do an order, please.

21 MR. JAMES: Yes, sir, Your Honor, absolutely.

22 (The hearing concluded at approximately
23 12:36 p.m.)

24 (End of Transcript of Record)
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)

5
6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of Common Pleas for Horry
13 County, South Carolina, on the 2nd day of January,
14 2018.

15
16 I FURTHER CERTIFY that I am neither of
17 kin, counsel nor interest to any party hereto.

18
19
20 *S/Teresa J. F. Bautz*

21 TERESA J.F. BAUTZ, RPR
22 Official Court Reporter
23
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	
Rondell Leon Carter,	)	Case No.: 2016-CP-22-00014
S.C.D.C. No. 238244,	)	
	)	
Applicant,	)	
	)	ORDER GRANTING RELIEF
v.	)	PURSUANT TO <u>AUSTIN V. STATE</u>,
	)	GRANTING PARTIAL MOTION TO DISMISS
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Rondell Leon Carter (Applicant) on January 6, 2016. Respondent made its Return and Partial Motion to Dismiss on or about February 13, 2017. The Court convened an evidentiary hearing into the matter on May 23, 2017, at the Horry County Courthouse in Conway, South Carolina. Applicant was present and represented by James K. Falk, Esquire. Johnny Ellis James Jr. and Valerie Garcia Giovanoli, of the South Carolina Office of the Attorney General, represented Respondent.

No testimony was taken at the hearing. The Court had before it a copy of the trial transcript, Applicant's appellate records, the records of the Georgetown County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings.

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the May 2009 term of the Georgetown County Grand Jury for burglary, first degree (2009-GS-22-00555),



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 ALISA Y. WHITE
 CLERK OF COURT

two counts of kidnapping (2009-GS-22-00556, -00559), possession of a weapon (2009-GS-22-00557), and two counts of armed robbery (2009-GS-22-00560, -00561); Applicant was further indicted at the June 2011 term for two counts of assault and battery with intent to kill (2011-GS-22-00645, -00701). James R. Felts, Esquire, and Gerald E. Harmon, Esquire, represented Applicant, and Erin Bailey, of the Fifteenth Circuit Solicitor's Office, prosecuted the case.

Applicant proceeded to trial on June 27, 2011, before the Honorable Benjamin H. Culbertson and a jury. Judge Culbertson granted Applicant's motion to quash one of the ~~ABWIK~~ indictments (-00701) at the beginning of trial. The jury found Applicant guilty as indicted on all other charges on June 29, 2011. Pursuant to S.C. Code Ann. § 17-25-45, and based upon a prior conviction for voluntary manslaughter, Judge Culbertson sentenced Applicant to life incarceration.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Robert M. Pachak. By opinion decided April 17, 2013, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Carter, Op. No. 2013-UP-157 (S.C. Ct. App. filed April 17, 2013). The Remittitur was issued on June 10, 2013.

First PCR Application: 2013-CP-22-00721

Applicant filed his first application for post-conviction relief on July 18, 2013 (2013-CP-22-00721). He alleged the following grounds for relief in his application:

1. "Improper chain of custody"
2. "Inadmissible, Improper mishandling of evidence"
3. "Ineffective Assistance of trial counsel"
4. "403 objections to victim injuries, Improper Investigation, Improper testimony"

Respondent made its return on February 27, 2014, and an evidentiary hearing into the matter was convened on February 5, 2015, before the Honorable G. Thomas Cooper. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, of the South

Carolina Attorney General's Office, represented Respondent. At the evidentiary hearing, Applicant proceeded on the following allegations:

1. Ineffective Assistance of Trial Counsel
 - a. Failure to call Thurmond Seward and Matthew Cobb as defense witnesses.
 - b. Failure to cross-examine Herman McCray on his plea deal.
2. Ineffective Assistance of Appellate Counsel
 - a. Failure to argue the trial judge erred in instructing the jury on accomplice liability.
 - b. Failure to argue the trial judge erred in admitting evidence without a sufficient chain of custody.

Applicant testified on his own behalf, and James R. Felts, Esquire, also testified. By written order dated April 27, 2015, and filed May 14, 2015, Judge Cooper denied and dismissed the application. Applicant did not appeal Judge Cooper's order.

II. CURRENT APPLICATION

In his second and current post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel, in that:
 - a. Counsel failed to file an appeal from the first PCR
2. Ineffective assistance of trial counsel, in that:
 - a. "its the same issues that was raised in my first P.C.R. hearing."
3. Ineffective assistance of appellate counsel, in that:
 - a. "its the same issues that was raised in my first P.C.R. hearing."
4. Prosecutorial misconduct, in that:
 - a. "its the same issues that was raised in my first P.C.R. hearing."

Applicant requests relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Before this Court are the Georgetown County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the final order of Applicant's previous PCR action, and the pleadings of the present PCR action. The Court has reviewed this record in its entirety, but as previously indicated, took no testimony.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Austin v. State

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application because his prior PCR counsel, Tristian M. Shaffer, Esquire, failed to timely file a notice of intent to appeal. Pursuant to Austin v. State, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

At the outset of the hearing, counsel for Respondent indicated to this Court that prior to the hearing, but after the matter was placed on the roster, it received from an affidavit from Mr. Schaffer in support of Applicant's Austin claim. On the basis of that affidavit, Respondent conceded on the record that Applicant did not knowingly and intelligently waive his right to appeal from the Order filed May 14, 2015, denying his prior PCR.

Accordingly, this Court agrees and finds that Applicant did not knowingly and voluntarily waive his right to appeal the first PCR application. , This Court grants Applicant relief pursuant to Austin v. State review of the Order of Dismissal filed May 14, 2015, denying his first PCR application (2013-CP-22-00721).

Ineffective Assistance of PCR Counsel

At the hearing, after the State conceded the Austin issue and sought a grant of its motion to dismiss on the remaining issues, Applicant notified the Court of his concern that prior PCR counsel failed to properly preserve all issues for appeal in the prior PCR hearing. Respondent argued that, outside of the Austin context, ineffective assistance of PCR counsel was not a claim cognizable under the Uniform Post-Conviction Procedure Act, and in support cited to Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

The Court finds that ineffective assistance of PCR counsel is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice at 452, 409 S.E.2d at 395.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" and is only applicable in limited circumstances to correct procedural defects where an applicant is denied his "one full bite at the apple." Id.; Aice, 305 S.C. at 452, 409 S.E.2d at 394; see also Odöm v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

Here, Applicant received a hearing in his first PCR action. It is clear that, but for the failure to file a notice of intent to appeal, Applicant enjoyed a complete adjudication on the merits of his original application. Applicant's allegations of ineffective assistance of PCR counsel, beyond the Austin context, fall outside any exception to the rule barring such claims. Therefore, to whatever extent the application and Applicant's concerns may be construed as a broader allegation of ineffective assistance of PCR counsel,¹ the Court dismisses it as not cognizable under the Uniform Post-Conviction Procedure Act.

¹ See Rule 8(f), SCRCP ("All pleadings shall be so construed as to do substantial justice to all parties.").

Statute of Limitations

The Court finds the remainder of Applicant's allegations must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

Applicant was convicted on June 29, 2011, and the remittitur from his direct appeal issued on June 20, 2013. The current application was not filed until January 6, 2016—well after the one-year statutory filing period expired. Therefore, excepting the claim and grant of relief pursuant to Austin v. State, the Court dismisses the application as barred by the statute of limitations.

Successive

Excepting the claim and grant of relief pursuant to Austin v. State, the Court also finds the application must be dismissed as successive to Applicant's previous PCR application. Courts

disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations, by his own description, were raised in the proceedings based on Applicant's prior application for post-conviction relief; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and

excepting the claim and grant of relief pursuant to Austin v. State, the Court dismisses the application as successive to Applicant's previous PCR application.

Res Judicata

Again excepting the claim and grant of relief pursuant to Austin v. State, the Court finds the application is similarly barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all his allegations in his prior actions. His present allegations are, by his own description, the same issues that were raised in his first post-conviction relief hearing. The finality of the previous Court rulings shall be respected, and excepting the claim and grant of relief pursuant to Austin v. State, the Court dismisses the application as barred by the doctrine of *res judicata*.

[Conclusion and signature on following page]

IV. CONCLUSION

This Court finds that the grant of relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) is proper. This Court further finds Respondent's motion to dismiss the remaining allegations is well founded, and all other allegations are dismissed as untimely, successive, and barred by the doctrine of *res judicata*.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) day sfrom his attorney's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his attorney must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Applicant be granted an appeal of case 2013-CP-22-00721 pursuant to Austin v. State;
2. All other allegations are denied and dismissed with prejudice; and
3. The Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15th day of August, 2017.


 ROGER E. HENDERSON
 Presiding Judge
 Fifteenth Judicial Circuit

Chertoff, South Carolina

WITNESSES

Georgetown County Sheriff's Office

REST WARRANT NUMBER

J520469

CDR: 0079 §16-11-0311

DOI: January 23, 2009

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 5-13-09

VERDICT

Guilty

Foreperson of Petit Jury

Date:

6/29/11

DOCKET NO. 2009-GS-22-00555x

The State of South Carolina

County of Georgetown

T. Will Andrew

09G00115

COURT OF GENERAL SESSIONS

MAY, 2009 TERM

THE STATE

vs.

RONDELL LEON CARTER

B/M

ATTORNEY:

Indictment for

BURGLARY, 1ST DEGREE
(VIOLENT)

J. Gregory Hembree, Solicitor

SCANNED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

INDICTMENT

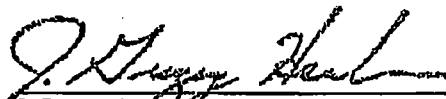
At a Court of General Sessions, convened on May 13, 2009, the Grand Jurors of Georgetown County present upon their oath:

BURGLARY, 1ST DEGREE

CDR: 0079 §16-11-0311

That Rondell Leon Carter did in Georgetown County on or about January 23, 2009 enter and or remain in the nighttime the dwelling of William Douglas located at [REDACTED] without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant was armed with a deadly weapon and/or caused physical injury to a non-participant in the crime and/or used or threatened the use of dangerous instrument and/or displayed what appeared to be a firearm, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 J. GREGORY HEMBREE
 FIFTEENTH CIRCUIT SOLICITOR

SCANNED

WITNESSES

Georgetown County Sheriff's Office

REST WARRANT NUMBER

J520470

CDR: 0095 §16-03-0910

DOI: January 23, 2009

ACTION OF GRAND JURY**TRUE BILL**Foreperson of Grand Jury *Jennifer Green*
Date: *5-13-09***VERDICT***Guilty*Foreperson of Petit Jury *Albert Fodden*
Date: *6/29/11*DOCKET NO. 2009-GS-22-00556^x**The State of South Carolina****County of Georgetown**

T. Will Andrew

09G00115

COURT OF GENERAL SESSIONS**MAY, 2009 TERM****THE STATE****vs.****RONDELL LEON CARTER****B/M****ATTORNEY:****Indictment for****KIDNAPPING****J. Gregory Hembree, Solicitor****SCANNED**

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

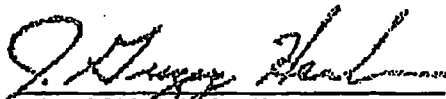
At a Court of General Sessions, convened on May 13, 2009, the Grand Jurors of Georgetown County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 §16-23-0490

That Rondell Leon Carter did at or near [REDACTED] County, on or about January 23, 2009, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

WITNESSES

Georgetown County Sheriff's Office

REST WARRANT NUMBER

J520476

CDR: 0549 §16-23-0490

DOI: January 23, 2009

ACTION OF GRAND JURY**TRUE BILL**reperson of Grand Jury *Jennifer Green*Date: *5-13-09***VERDICT***Guilty*

Foreperson of Petit Jury

Date:

*6/29/11**Allan Fodner*DOCKET NO. 2009-GS-22-00557^x**The State of South Carolina****County of Georgetown**T. Will Andrew09G00115**COURT OF GENERAL SESSIONS****MAY, 2009 TERM****THE STATE**

vs.

RONDELL LEON CARTER**B/M****ATTORNEY:****Indictment for****POSSESSION OF A WEAPON
DURING THE COMMISSION OF A
VIOLENT CRIME**J. Gregory Hembree, Solicitor

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

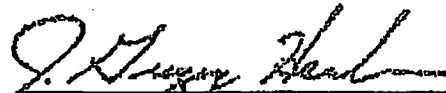
At a Court of General Sessions, convened on May 13, 2009, the Grand Jurors of Georgetown County present upon their oath:

KIDNAPPING

GDP: 0005 816-03-0910

That Rondell Leon Carter did at or near [REDACTED] County on or about January 23, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one William Douglas, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

WITNESSES

Georgetown County Sheriff's Office

ARREST WARRANT NUMBER**DIRECT INDICTMENT**

CDR: 0095 §16-03-0910

DOI: January 23, 2009

ACTION OF GRAND JURY**TRUE BILL**represent person of Grand Jury *Jennifer Jones*

Date: 5-13-09

VERDICT*Guilty*Foreperson of Petit Jury *Allet Fodner*

Date:

*6/29/11*DOCKET NO. 2009-GS-22-00559[✓]x**The State of South Carolina****County of Georgetown**T. Will Andrew09G00115**COURT OF GENERAL SESSIONS****MAY, 2009 TERM****THE STATE****VS.****RONDELL LEON CARTER****B/M****ATTORNEY:****Indictment for****KIDNAPPING**J. Gregory Hembree, Solicitor

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

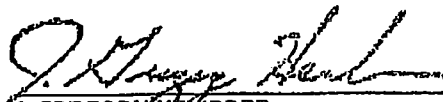
At a Court of General Sessions, convened on May 13, 2009, the Grand Jurors of Georgetown County present upon their oath:

KIDNAPPING

CDR: 0095 §16-03-0910

That Rondell Leon Carter did at or near [REDACTED] on or about January 23, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Christina Carroll, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCA11111111

WITNESSES

Georgetown County Sheriff's Office

REST WARRANT NUMBER**DIRECT INDICTMENT**

CDR: 0139 §16-11-0330(A)

DOI: January 23, 2009

ACTION OF GRAND JURY**TRUE BILL**
 reperson of Grand Jury *Jennifer Green*
 Date: *5-15-09*
VERDICT*Guilty*
 Foreperson of Petit Jury
 Date:
*6/29/11**Albert Foderus*DOCKET NO. 2009-GS-22-00560 ✓**The State of South Carolina****County of Georgetown**

T. Will Andrew

08G00115

COURT OF GENERAL SESSIONS**MAY, 2009 TERM****THE STATE**

vs.

RONDELL LEON CARTER**ATTORNEY:****Indictment for****ARMED ROBBERY****J. Gregory Hembree, Solicitor**

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

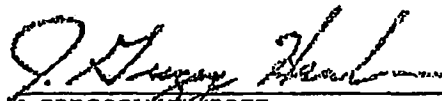
At a Court of General Sessions, convened on May 13, 2009, the Grand Jurors of Georgetown County present upon their oath:

ARMED ROBBERY

CDR: 0139 §16-11-0330(A)

That Rondell Leon Carter did at or near [REDACTED] on or about January 23, 2009, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of William Douglas from or in the immediate presence of William Douglas with intent to deprive William Douglas of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED